

Appellant §  
vs. § 10-03269  
King Louie Mining, LLC, et al §  
Appellee §

**148 Judgment revoking discharge of debtor Entered 7/8/14**  
**VOLUME 5**  
**APPELLANT RECORD**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: § CASE NO. 09-38820-SGJ-7  
§  
CENGIZ J. COMU, § CHAPTER 7  
§  
DEBTOR. §

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KING LOUIE MINING, LLC, §  
KING LOUIE ENTERPRISES, LLC, AND §  
RONALD KATZ, §  
Plaintiffs, §  
v. § ADV. NO. 10-03269-sgj  
§  
CENGIZ J. COMU a/k/a CJ COMU, §  
Defendant. §

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DIANE G. REED, TRUSTEE, §  
Intervenor, Co-plaintiff and §  
Third-party Plaintiff, §  
v. §  
CENGIZ J. COMU, §  
Defendant, §  
and §  
PHYLLIS E. COMU, §  
BERNARD D. BROWN, §  
THE BARCLAY GROUP, INC. AND §  
SUNSET PACIFIC, L.P., §  
Third-party Defendants. §

*INDEX*

**APPELLANT'S FIRST AMENDED DESIGNATION OF RECORD  
AND ISSUES ON APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Cengiz J. Comu, Appellant, and files this his First Amended Designation of Record and Issues on Appeal for the Judgment entered July 8, 2014 [Document No. 148] as follows:

I. Appellant designates the following documents from the docket sheet in Adversary Case No. 10-03269 for the Record on Appeal:

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| Filing Date | #   | Docket Text  |
|-------------|-----|--|
| 08/27/2014  | 164 | Notice of appeal . Fee Amount \$298 filed by Defendant Cengiz J. Comu (RE: related document(s) <u>148</u> Judgment: (A) Revoking discharge of debtor, pursuant to 11 U.S.C. 727(d); (B) Declaring certain property to be "Property of the Estate"; (C) Requiring turnover of certain property to the trustee; (D) Awarding monetary damages to trustee for the benefit of the estate; and (E) Separately awarding reasonable attorney's fees and expenses to plaintiffs Entered on 7/8/2014. (Related document(s) <u>20</u> Amended complaint filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz, <u>53</u> Intervenor complaint filed by Intervenor-Plaintiff Diane G. Reed)). Appellant Designation due by 9/10/2014. (Morales, D.) |
| 07/08/2014  | 148 | Judgment: (A) Revoking discharge of debtor, pursuant to 11 U.S.C. 727(d); (B) Declaring certain property to be "Property of the Estate"; (C) Requiring turnover of certain property to the trustee; (D) Awarding monetary damages to trustee for the benefit of the estate; and (E) Separately awarding reasonable attorney's fees and expenses to plaintiffs Entered on 7/8/2014. (Related document(s) <u>20</u> Amended complaint filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz, <u>53</u> Intervenor complaint filed by Intervenor-Plaintiff Diane G. Reed) (Rielly, Bill).   |
| 07/08/2014  | 147 | Findings of fact and conclusions of law in support of judgment: (A) Revoking discharge of debtor, pursuant to 11 U.S.C. 727(d); (B) Declaring certain property to be "Property of the Estate"; (C) Requiring turnover of certain property to the trustee; (D) Awarding monetary damages to trustee for the benefit of the estate; and (E) Separately awarding reasonable attorney's fees and expenses to plaintiffs Entered on 7/8/2014. (Rielly, Bill)  |
| 09/09/2014  |     | Docket Sheet   |
| 10/07/2010  | 5   | Motion to dismiss adversary proceeding <i>Pursuant to Fed. Rules Civ. Proc. Rule 12(b)(6)</i> filed by Defendant Cengiz J. Comu (Olson, Dennis)  |
| 11/08/2010  | 8   | Motion for leave to <i>Amend</i> filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC Objections due by 11/29/2010. (Attachments: <u>1</u> First Amended Complaint <u>2</u> Exhibit A <u>3</u> Exhibit B <u>4</u> Exhibit C) (Lippe, Emil)   |
| 11/08/2010  | 9   | Response opposed to (related document(s): <u>5</u> Motion to dismiss adversary proceeding <i>Pursuant to Fed. Rules Civ. Proc. Rule 12(b)(6)</i> filed by Defendant Cengiz J. Comu) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC. (Lippe, Emil)  |
| 01/10/2011  | 10  | Order denying motion to dismiss adversary proceeding as moot (related document # <u>5</u> ), granting motion for leave to amend complaint (related document # <u>8</u> ) Entered on 1/10/2011. Case is removed from docket for week of January 11, 2011. Counsel ORDERED to confer and submit proposed amended scheduling order for the trial of this case, to be submitted within 10 days from date of this Order. (Mathews, M.)  |

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| 161, 2 | 000275 | 01/20/2011 | 12 | Motion to dismiss adversary proceeding( <i>SECOND</i> ) filed by Defendant Cengiz J. Comu (Olson, Dennis)   |
| 000279 |        | 02/11/2011 | 16 | Response opposed to (related document(s): <u>12</u> Motion to dismiss adversary proceeding( <i>SECOND</i> ) filed by Defendant Cengiz J. Comu) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC. (Lippe, Emil)  |
| 000287 |        | 02/24/2011 | 17 | Order conditionally denying second motion to dismiss adversary proceeding (related document # <u>12</u> ) Entered on 2/24/2011. Plaintiffs are ORDERED to file amended complaint within 20 days of entry of this order. Defedant is ORDERED to file an answeror responsive pleading within 20 days of filing of the amended complaint. (Mathews, M.)  |
| 000290 |        | 03/02/2011 | 19 | Motion for leave to <i>Prosecute Action</i> filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC Objections due by 3/23/2011. (Lippe, Emil)   |
| 000293 |        | 03/02/2011 | 20 | Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Cengiz J. Comu No change to nature of suit. (RE: related document(s) <u>1</u> Adversary case 10-03269. Complaint by King Louie Mining, LLC, King Louie Enterprises, LLC, Ronald Katz against Cengiz J. Comu. Fee Amount \$250. Nature. filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz). (Attachments: <u>1</u> Exhibit A <u>2</u> Exhibit B) (Lippe, Emil) |
| 000340 |        | 03/23/2011 | 23 | Order denying motion for leave to prosecute action without prejudice (related document # <u>19</u> ) Entered on 3/23/2011. (Simpson, B)   |
| 000342 |        | 03/24/2011 | 24 | Motion to dismiss adversary proceeding( <i>THIRD</i> ) filed by Defendant Cengiz J. Comu (Olson, Dennis)  |
| 000345 |        | 04/19/2011 | 28 | Agreed Order granting <u>27</u> Motion to extend time to file response to motion to dismiss until 4/28/2011. Entered on 4/19/2011. (Simpson, B)   |
| 000347 |        | 04/28/2011 | 30 | Response opposed to (related document(s): <u>24</u> Motion to dismiss adversary proceeding( <i>THIRD</i> ) filed by Defendant Cengiz J. Comu) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC. (Lippe, Emil)   |
| 000357 |        | 05/04/2011 | 31 | Motion to continue hearing on (related documents <u>20</u> Amended complaint, <u>24</u> Motion to dismiss adversary proceeding)[ <i>Unopposed</i> ] filed by Interested Party Diane G. Reed, Trustee (Elmqvist, David)  |
| 000361 |        | 05/06/2011 | 32 | Order granting motion to continue hearing on (related document # <u>31</u> ) (related documents Motion to dismiss adversary proceeding( <i>THIRD</i> ) and <u>20</u> Amended Complaint) Entered on 5/6/2011. Hearing to be held on 7/11/2011 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>24</u> , Trial Docket Call date reset for 9/12/2011 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Mathews, M.) Modified text on 5/6/2011 (Mathews, M.).  |
| 000363 |        | 07/06/2011 | 36 | Second Motion to continue hearing on (related documents <u>20</u> Amended complaint, <u>24</u> Motion to dismiss adversary proceeding)[ <i>unopposed</i> ] filed by Interested Party Diane G. Reed, Trustee (Elmqvist, David)   |

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| 07/08/2011 | 37 | Order granting second unopposed motion to continue hearing on (related document # 36) (related documents Amended complaint, Motion to dismiss adversary proceeding( <i>THIRD</i> )) Entered on 7/8/2011. Hearing to be held on 9/15/2011 at 09:30 AM Dallas Judge Jernigan Ctrm for 24 Third motion to dismiss and for Trial Docket Call date set for 12/12/2011 at 01:30 PM at Dallas Judge Jernigan Ctrm. Further conditions per Order. (Mathews, M.)                          |
| 08/24/2011 | 39 | Agreed Motion to Abate Adversary Proceeding (related document(s)1 Complaint) Filed by Interested Party Diane G. Reed (Elmqvist, David) Modified TEXT on 8/25/2011 (Blanco, J.).  |
| 08/31/2011 | 40 | Agreed Order granting motion to abate adversary proceeding (related document # 39) Entered on 8/31/2011. (Mathews, M.)   |
| 05/24/2012 | 48 | Supplemental Order granting agreed motion to abate adversary proceeding including any hearing on the motion to dismiss, abated until August 1, 2012 further conditions per order (related document # 39 agreed motion to abate ) Entered on 5/24/2012. (Moroles, D.)   |
| 08/07/2012 | 50 | Order terminating abatement of adversary proceeding and requiring: (A) Trustee's Complaint in Intervention to be filed by August 31, 2012; and (B) parties to upload Agreed Scheduling Order, or in the alternative, Court will enter its own Scheduling Order (related document # 39) Entered on 8/7/2012. Further details per Order. (Mathews, M.)   |
| 09/05/2012 | 53 | Intervenor complaint by Diane G. Reed against Sunset Pacific, L.P., The Barclay Group, Inc., Bernard D Brown, Phyllis E Comu, Cengiz J. Comu.. (Elmqvist, David)   |
| 09/06/2012 | 54 | Order granting Trustee's Unopposed Motion to Extend Deadline to File a Complaint in Intervention 52 Motion to extend time. Ordered that the deadline is hereby extended to September 5, 2012. Entered on 9/6/2012. (Tello, Chris)  |
| 09/20/2012 | 59 | Agreed Scheduling Order Entered on 9/20/2012 (RE: related document(s)20 Amended complaint filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz). Trial Docket Call date set for 7/8/2013 at 01:30 PM at Dallas Judge Jernigan Ctrm. Hearing on Defendant Cengiz J. Comu's Third Amended Motion to Dismiss Case is set for 10/31/2012 at 9:30 AM. (Mathews, M.) MODIFIED hearing dates on 9/21/2012 (Mathews, M.).             |
| 09/28/2012 | 61 | Supplemental Response opposed to (related document(s): 24 Motion to dismiss adversary proceeding( <i>THIRD</i> ) filed by Defendant Cengiz J. Comu) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC. (Lippe, Emil)  |
| 09/28/2012 | 62 | Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Daptco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit. (RE: related document(s)1 Adversary case 10-03269. Complaint by King Louie Mining, LLC, King Louie Enterprises, LLC, Ronald Katz against |



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|--------|------------|----|--|
| Vol. 2 |            |    | Cengiz J. Comu. Fee Amount \$250. Nature(s) of suit: 41 (Objection / revocation of discharge - 727(c),(d),(e)). (Lippe, Emil) Modified text on 9/7/2010 (Luna, G). filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz). (Lippe, Emil)   |
| 000429 | 10/09/2012 | 64 | Answer to Intervenor complaint (Related document: <u>53</u> Intervenor complaint by Diane G. Reed against Sunset Pacific, L.P., The Barclay Group, Inc., Bernard D Brown, Phyllis E Comu, Cengiz J. Comu. (Elmqvist, David) filed by Bernard D Brown, Cengiz J. Comu, Phyllis E. Comu, Sunset Pacific, L.P., The Barclay Group, Inc.. (Olson, Dennis) Modified text on 10/9/2012 (Tello, Chris). |
| 000433 | 10/09/2012 | 65 | Reply to (related document(s): <u>30</u> Response filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz, <u>61</u> Response filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz) filed by Defendant Cengiz J. Comu. (Olson, Dennis)  |
| 000437 | 10/26/2012 | 66 | Motion to appear pro hac vice for David H. Wander. Fee Amount \$25 filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (Attachments: # <u>1</u> Exhibit) (Lippe, Emil)  |
| 000441 | 10/29/2012 | 68 | Motion for leave to <i>File Third Amended Complaint and Brief in Support</i> filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC Objections due by 11/23/2012. (Lippe, Emil)  |
| Vol. 3 | 10/30/2012 | 69 | Motion for leave to <i>File Surreply to Defendant's Response to Plaintiffs' Supplemental Response to Third Motion to Dismiss</i> filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC Objections due by 11/23/2012. (Attachments: # <u>1</u> Exhibit A - Surreply# <u>2</u> Proposed Order) (Lippe, Emil)  |
| 000451 | 10/31/2012 | 70 | Order granting motion to appear pro hac vice adding David H. Wander for Ronald Katz and King Louie Mining, LLC (related document # <u>66</u> ) Entered on 10/31/2012. (Mathews, M.)  |
| 000470 | 11/02/2012 | 71 | Order denying Plaintiffs' motion for leave to file Third Amended Complaint (related document # <u>68</u> ) Entered on 11/2/2012. (Mathews, M.)   |
| 000471 | 11/02/2012 | 72 | Order denying Plaintiffs' motion for leave to File Surreply to Defendant's Response to Plaintiffs' Supplemental Response to Third Motion to Dismiss (related document # <u>69</u> ) Entered on 11/2/2012. (Mathews, M.)  |
| 000473 | 11/14/2012 | 76 | Order denying motion to dismiss adversary proceeding (related document # <u>24</u> ) Entered on 11/14/2012. (Mathews, M.)  |
| 000475 | 12/07/2012 | 78 | Answer to complaint ( <i>Second Amended</i> ) to <i>Revoke Discharge</i> filed by Cengiz J. Comu. (Olson, Dennis)  |
| 000477 | 06/07/2013 | 88 | Motion to substitute attorney Emil Lippe, Jr., Law Offices of Lippe & Associates with Shari L. Heyen, Kendyl T. Hanks and Charles P. Floyd, Greenberg Traurig, LLP and for <i>Withdrawal of Attorney Emil Lippe, Jr., Law Offices of Lippe &amp; Associates</i> , filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (Heyen, Shari)                            |
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| 06/12/2013 | 89  | Agreed Motion to amend scheduling order. (related documents 4 Standing scheduling order in an adversary proceeding) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (Attachments: # 1 Exhibit A - Proposed Agreed Scheduling Order) (Heyen, Shari)  |
| 06/21/2013 | 90  | Agreed order granting motion to amend scheduling order (related document # 89) Trial Docket Call date set for 9/9/2013 at 01:30 PM Dallas Judge Jernigan Ctrm for 20, Entered on 6/21/2013. (Rielly, Bill)   |
| 06/21/2013 | 91  | Order granting motion to substitute attorney adding Shari L. Heyen for King Louie Mining, LLC; Ronald Katz and King Louie Enterprises, LLC, Kendyl T. Hanks for King Louie Mining, LLC; Ronald Katz and King Louie Enterprises, LLC, Charles P. Floyd for King Louie Mining, LLC; Ronald Katz and King Louie Enterprises, LLC, terminating Emil Lippe, Jr.. (related document # 88) Entered on 6/21/2013. (Rielly, Bill) |
| 07/19/2013 | 94  | Motion to intervene filed by Intervenor-Plaintiff Lippe & Perry, P.C., d/b/a Law Offices of Lippe & Associates (Attachments: # 1 Exhibit # 2 Affidavit # 3 Exhibit 1 # 4 Exhibit 2 # 5 Proposed Order) (Lippe, Emil)   |
| 08/12/2013 | 96  | Response opposed to (related document(s): 94 Motion to intervene filed by Intervenor-Plaintiff Lippe & Perry, P.C., d/b/a Law Offices of Lippe & Associates) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC. (Heyen, Shari)  |
| 08/14/2013 | 97  | Reply to (related document(s): 96 Response filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz) filed by Intervenor-Plaintiff Lippe & Perry, P.C., d/b/a Law Offices of Lippe & Associates. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Lippe, Emil)   |
| 08/21/2013 | 98  | Order denying motion to intervene (related document # 94) Entered on 8/21/2013. (Rielly, Bill)   |
| 08/23/2013 | 99  | Agreed Motion to amend scheduling order. (related documents 4 Standing scheduling order in an adversary proceeding) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (Attachments: # 1 Exhibit A - Agreed Order to Amend Scheduling Order) (Heyen, Shari)  |
| 09/13/2013 | 101 | Agreed order granting motion to amend scheduling order (related document # 99) Trial Docket Call date set for 12/9/2013 at 01:30 PM Dallas Judge Jernigan Ctrm for 20, Entered on 9/13/2013. (Rielly, Bill)  |
| 11/25/2013 | 103 | Witness and Exhibit List for Trial, per Scheduling Order filed by Defendants Bernard D Brown, Cengiz J. Comu, Phyllis E Comu, Sunset Pacific, L.P., The Barclay Group, Inc. (RE: related document(s) 62 Amended complaint). (Olson, Dennis)  |
| 11/25/2013 | 104 | Motion to amend scheduling order. (related documents 4 Standing scheduling order in an adversary proceeding) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (Attachments: # 1 Exhibit A - Proposed Order) (Heyen, Shari)   |



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| 000630 | 11/27/2013 | 105 | Support/supplemental document( <i>Supplement to Plaintiffs' Motion for Continuance of Scheduling Order Deadlines and Trial</i> ) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (RE: related document(s)104 Motion to amend scheduling order. (related documents 4 Standing scheduling order in an adversary proceeding)). (Heyen, Shari) |
| 000633 | 12/09/2013 | 106 | Agreed order granting motion to amend scheduling order (related document # 104) Entered on 12/9/2013. Trial Docket Call date set for 3/3/2014 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Rielly, Bill)   |
| 000637 | 12/20/2013 | 108 | Motion for preliminary injunction ( <i>expedited</i> ) filed by Intervenor-Plaintiff Diane G. Reed (Elmqvist, David)  |
| 000647 | 12/20/2013 | 109 | Motion for expedited hearing(related documents 108 Motion for preliminary injunction) filed by Intervenor-Plaintiff Diane G. Reed (Elmqvist, David)   |
| 000651 | 12/20/2013 | 110 | Order granting ex parte motion for expedited hearing (Related Doc# 109)(document set for hearing: 108 Motion for preliminary injunction) Entered on 12/20/2013. Hearing to be held on 12/23/2013 at 09:30 AM Dallas Judge Jernigan Ctrm for 108, (Rielly, Bill)   |
| 000653 | 12/20/2013 | 111 | Agreed order granting motion for temporary restraining order (related document 108) Entered on 12/20/2013. Preliminary injunction hearing to be held on 1/3/2014 at 09:30 AM Dallas Judge Jernigan Ctrm (Rielly, Bill)  |
| 000656 | 01/03/2014 | 116 | Agreed Order Continuing Temporary Restraining Order (related document # 108) Entered on 1/3/2014. (Jones, A.)   |
| 000659 | 02/24/2014 | 118 | Amended Witness and Exhibit List filed by Defendants Bernard D Brown, Cengiz J. Comu, Phyllis E Comu, Sunset Pacific, L.P., The Barclay Group, Inc. (RE: related document(s)103 List (witness/exhibit/generic)). (Olson, Dennis)  |
| 000662 | 02/24/2014 | 119 | Witness and Exhibit List for Trial filed by Intervenor-Plaintiff Diane G. Reed (RE: related document(s)62 Amended complaint). (Elmqvist, David)   |
| Vol. 4 | 02/24/2014 | 120 | Witness and Exhibit List filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (RE: related document(s)62 Amended complaint). (Heyen, Shari)   |
| 000670 | 02/26/2014 | 121 | Stipulation by Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC and All Defendants. filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (RE: related document(s)106 Order on motion to amend scheduling order). (Heyen, Shari)   |
| 000722 | 03/03/2014 | 124 | Stipulation by Diane G. Reed and Plaintiffs and Defendants. filed by Intervenor-Plaintiff Diane G. Reed (RE: related document(s)53 Intervenor complaint, 62 Amended complaint). (Elmqvist, David)   |
| 000726 | 03/03/2014 | 125 | Proposed findings of fact and conclusions of law filed by Intervenor-Plaintiff Diane G. Reed (RE: related document(s)53 Intervenor complaint). (Elmqvist, David)  |
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| 03/04/2014 | 126 | Proposed findings of fact and conclusions of law filed by Defendants Bernard D Brown, Cengiz J. Comu, Phyllis E Comu, Sunset Pacific, L.P., The Barclay Group, Inc. (RE: related document(s) <u>62</u> Amended complaint). (Olson, Dennis)   |
| 03/04/2014 | 127 | Proposed findings of fact and conclusions of law filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (RE: related document(s) <u>62</u> Amended complaint). (Heyen, Shari)  |
| 03/05/2014 | 130 | Order setting trial Entered on 3/5/2014 (RE: related document(s) <u>62</u> Amended complaint filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz). Trial date set for 3/17/2014 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Rielly, Bill)                            |
| 03/11/2014 | 132 | Amended Witness and Exhibit List <i>for Trial</i> filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (RE: related document(s) <u>120</u> List (witness/exhibit/generic)). (Heyen, Shari)   |
| 03/13/2014 | 134 | Amended Witness and Exhibit List filed by Intervenor-Plaintiff Diane G. Reed (RE: related document(s) <u>119</u> List (witness/exhibit/generic)). (Elmqvist, David)  |
| 03/14/2014 | 135 | Amended Witness and Exhibit List <i>Second Amended</i> filed by Defendants Bernard D Brown, Cengiz J. Comu, Phyllis E Comu, Sunset Pacific, L.P., The Barclay Group, Inc. (RE: related document(s) <u>118</u> List (witness/exhibit/generic)). (Olson, Dennis)   |
| 03/16/2014 | 137 | Amended Witness and Exhibit List ( <i>Second</i> ) filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (RE: related document(s) <u>132</u> List (witness/exhibit/generic)). (Heyen, Shari)  |
| 03/17/2014 | 138 | First Amended Proposed Joint Pre-Trial order Entered on 3/17/2014. (Rebeck, B)   |
| 04/04/2014 | 142 | Extended temporary restraining order and mandatory injunction Entered on 4/4/2014. (Rielly, Bill)  |
| 04/23/2014 | 144 | Notice of Trustee's Status Report of Compliance filed by Intervenor-Plaintiff Diane G. Reed (RE: related document(s) <u>142</u> Temporary restraining order). (Elmqvist, David)  |
| 07/29/2014 | 161 | Motion to extend time to appeal - Rule 8002c (RE: related document(s) <u>148</u> Judgment) Filed by Defendant Cengiz J. Comu (Blanco, J.) (Entered: 08/20/2014)  |
| 07/30/2014 | 153 | Application for compensation <i>Plaintiffs Preliminary Application for Attorneys' Fees and Expenses Awarded in the Court's July 8, 2014 Judgment</i> for Shari L. Heyen, Creditor's Attorney, Period: 10/26/2011 to 7/28/2014, Fee: \$946,504.90, Expenses: \$12,800.00. Filed by Attorney Shari L. Heyen (Heyen, Shari) |
| 07/30/2014 | 154 | Motion to extend time to To Submit Affidavit and Evidence in Support of Application for Attorneys' Fees & Expenses Awarded in the Court's July 8, 2014 Judgment Filed by Plaintiffs Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC (Heyen, Shari)  |
| 08/20/2014 | 162 | Order granting motion for leave to file notice of appeal out of time <u>161</u>  |

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|            |     | Motion to extend time to appeal - Rule 8002c. Entered on 8/20/2014. (Rielly, Bill)   |
| 08/27/2014 | 165 | Order granting motion to extend time to file application for attorney's fees and expenses <u>154</u> Motion to extend time. Entered on 8/27/2014. (Rielly, Bill)                     |
| 08/29/2014 | 168 | Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>164</u> Notice of appeal filed by Defendant Cengiz J. Comu) (Blanco, J.) |

II. Appellant also designates all exhibits admitted at trial, March 17 through March 21, 2014.

Not Provided by Appellant

III. Appellant also designates the following transcripts:

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| 11/09/2010 | 177 | Hearing held on 11/9/2010. (RE: related document(s) <u>5</u> Motion to dismiss adversary proceeding Pursuant to Fed. Rules Civ. Proc. Rule 12(b)(6) filed by Defendant Cengiz J. Comu filed by Defendant Cengiz J. Comu) APPEARANCES: D. Olson for Debtor; E. Lippe for Plaintiff. Nonevidentiary hearing. Announcement of an agreed order having been submitted that contemplates Plaintiff's agreement to file Amended Complaint with Debtor's reservation of right to re-urge motion to dismiss. Court will sign order. (Womack, Jennifer) (Entered: 11/12/2010)  |
| 02/14/2011 | 178 | Hearing held on 2/14/2011. (RE: related document(s) <u>12</u> Motion to dismiss adversary proceeding (SECOND) filed by Defendant Cengiz J. Comu filed by Defendant Cengiz J. Comu) Appearances: D. Olsen for Defendant/Debtor; E. Lippe for Plaintiff. Nonevidentiary hearing. Motion denied, conditional on Plaintiff, within 20 days, amending Complaint again to provide more specificity regarding specific provisions of Section 727(d) being alleged, when acts were discovered and how, and addressing his standing, versus the Chapter 7 Trustees, to seek avoidance of alleged fraudulent transfers. If not amendment within 20 days, complaint will be dismissed. If amendment, then Defendant has 20 days thereafter to answer/respond. Counsel to submit order. (Harden, D.) (Entered: 02/18/2011)   |
| 05/02/2012 | 179 | Status conference held (RE: related document(s) <u>20</u> Amended complaint) Appearances: E. Lippe and D. Wander (telephonically) for Plaintiffs; D. Elmquist for Trustee; D. Olson for Debtor. Nonevidentiary hearing. Based on statements of counsel, court will continue abatement through 8/1/12 and counsel shall contact courtroom deputy for another status conference the first week of August 2012. Counsel shall upload an order continuing abatement. (Davis, T.) (Entered: 05/14/2012)   |
| 07/31/2012 | 180 | Hearing held on 7/31/2012. (RE: related document(s) <u>20</u> Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Cengiz J. Comu No change to nature of suit. (RE: related document(s) <u>1</u> Adversary case 10-03269. Complaint by King Louie Mining, LLC, King Louie Enterprises, LLC, Ronald Katz against Cengiz J. Comu. Fee Amount \$250. Nature. filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz). (Attachments: <u>1</u> Exhibit A <u>2</u> Exhibit B) filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz) Appearances: D. Elmquist for Trustee; E. Lippe and D. Wander (telephonically) for Plaintiff; D. Olson for Debtor. Nonevidentiary status conference. Court heard reports regarding Rule 2004 examinations that have been ongoing and Trustees intention to file a Complaint in Intervention by 8/31/12. Court will enter Order terminating the abatement of this Adversary Proceeding and requiring: (a) Trustees Complaint in Intervention to be filed by 8/31/12; and (b) parties to upload Agreed Scheduling Order by 9/14/12 (inclusive of deadlines pertaining to the pending Rule 12(b)(6) |



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|            |     | motion) or, in the alternative, court will enter its own Scheduling Order thereafter setting a January 2013 trial docket call and deadlines pertaining to the Rule 12(b)(6) motion. (Baird, Dennis) (Entered: 08/01/2012)   |
| 10/31/2012 | 181 | Hearing held on 10/31/2012. (RE: related document(s)24 Motion to dismiss adversary proceeding( <i>THIRD</i> ) filed by Defendant Cengiz J. Comu) Appearances: D. Olson for Movant/Defendant/Debtor; D. Elmquist for Trustee; E. Lippe and D. Wander (telephonically) for Plaintiff/King Louie Mining. Nonevidentiary hearing. Motion denied. Court also denied a pending Motion for Leave by Plaintiff/King Louie Mining to File Third Amended Complaint. Thus, Second Amended Complaint of King Louie Mining (Section 727 count only) and Complaint in Intervention of Trustee are now governing pleadings in this Adversary Proceeding. Mr. Lippe to upload orders on motion to dismiss and motion for leave. (Baird, Dennis)   |
| 08/15/2013 | 182 | Hearing held on 8/15/2013. (RE: related document(s)94 Motion to intervene filed by Intervenor-Plaintiff Lippe & Perry, P.C., d/b/a Law Offices of Lippe & Associates (Attachments: # 1 Exhibit # 2 Affidavit # 3 Exhibit 1 # 4 Exhibit 2 # 5 Proposed Order)) Appearances: E. Lippe for his firm; K. Hanks and C. Floyd for Plaintiffs other than the Trustee; D. Elmquist for Trustee; R. Nicoud for Debtor. Nonevidentiary hearing. Motion denied. Ms. Hanks to upload order. (Harden, D.) (Entered: 08/21/2013)  |
| 03/04/2014 | 183 | Pre-trial conference held on 3/4/2014. (RE: related document(s)62 Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Daptco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit. (RE: related document(s)1 Adversary case 10-03269. Complaint by King Louie Mining, LLC, King Louie Enterprises, LLC, Ronald Katz against Cengiz J. Comu. Fee Amount \$250. Nature(s) of suit: 41 (Objection / revocation of discharge - 727(c),(d),(e)). (Lippe, Emil) Modified text on 9/7/2010 (Luna, G). filed by Plaintiff King Louie Mining, LLC, Plaintiff King Louie Enterprises, LLC, Plaintiff Ronald Katz.) Appearances: K. Hanks and V. Vital for Creditor/Plaintiffs; D. Elmquist for Intervenor/Plaintiff; D. Olson for Defendants. Nonevidentiary status conference. Court will issue order setting trial for March 17, 2014 at 9:30 am, continuing through March 21, 2014. Parties to upload final Pre-Trial Order by March 14, 2014. (Harden, D.) (Entered: 03/06/2014) |
| 03/17/2014 | 184 | Trial held on 3/17/2014. (RE: related document(s)62 Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Daptco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit.)  |



|        |            |     |   |
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| Vol. 6 |            |     | Appearances: K. Hanks, V. Vital and N. Sarokhanian for Plaintiffs; D. Elmquist for Trustee; D. Olson for Defendants. Evidentiary trial. Trial continued to 3/18/14 at 9:30 am. (Harden, D.) (Entered: 03/25/2014)   |
| 001277 | 03/18/2014 | 185 | Trial held on 3/18/2014. (RE: related document(s)62 Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Dapco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit.)<br>Appearances: K. Hanks, V. Vital and N. Sarokhanian for Plaintiffs; D. Elmquist for Trustee; D. Olson for Defendants. Evidentiary trial. Trial continued to 3/19/14 at 9:30 am. (Harden, D.) (Entered: 03/25/2014)  |
| Vol. 7 | 03/19/2014 | 186 | Trial held on 3/19/2014. (RE: related document(s)62 Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Dapco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit.)<br>Appearances: K. Hanks, V. Vital and N. Sarokhanian for Plaintiffs; D. Elmquist for Trustee; D. Olson for Defendants. Evidentiary trial. Trial continued to 3/20/14 at 9:30 am. (Harden, D.) (Entered: 03/25/2014)  |
| 001538 | 03/20/2014 | 187 | Trial held on 3/20/2014. (RE: related document(s)62 Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Dapco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit.)<br>Appearances: K. Hanks, V. Vital and N. Sarokhanian for Plaintiffs; D. Elmquist for Trustee; D. Olson for Defendants. Evidentiary trial. Trial continued to 3/21/14 at 9:30 am. (Harden, D.) (Entered: 03/25/2014)  |
| Vol. 8 | 03/21/2014 | 188 | Trial held on 3/21/2014. (RE: related document(s)62 Amended complaint by Emil Lippe Jr. on behalf of Ronald Katz, King Louie Enterprises, LLC, King Louie Mining, LLC against Phyllis E. Comu, Regus Advisors, Inc., Marathon Management Limited Company, Dapco Trust, TKY Trust, The Barclay Group, Inc., Sunset Pacific, L.P., Bernard D Brown, Cengiz J. Comu Adding nature(s) of suit.)<br>Appearances: K. Hanks, V. Vital and N. Sarokhanian for Plaintiffs; D. Elmquist for Trustee; D. Olson for Defendants. Evidentiary trial. Trial concluded. Court gave bench ruling: (a) revocation of discharge shall be ordered as to the Debtor, pursuant to Section 727(d)(1) & (2) of the Bankruptcy Code, based on fraud and concealment of assets of which Plaintiffs (and Trustee) were unaware until after the granting of discharge, and also based on Debtors acquiring or becoming entitled to acquire property that was or would be property of the estate and knowingly and fraudulently failing to report, deliver and surrender it to Trustee; (b) The Barclay Group, Inc. and Sunset Pacific are the alter |
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|  |  | egos of Debtor and their veil should be pierced; (c) Debtor should turnover previously undisclosed Turkish Bank Account and the equity/asset-control of The Barclay Group, Inc. and Sunset Pacific to Trustee; (d) parties may submit post-trial briefing regarding possible monetary damages to the estate. Counsel will upload an amended restraining order and injunction, as soon as possible, to protect dissipation of Green Auto stock or other assets of The Barclay Group, Inc. and Sunset Pacific. Counsel will subsequently upload proposed Findings of Fact, Conclusions of Law and Judgment that are consistent with the courts oral ruling and otherwise consistent with the evidence. (Harden, D.) (Entered: 03/25/2014) |
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IV. Appellant states the following Issues presented on Appeal:

1. The Bankruptcy Judge erred in revoking the Debtor's discharge.
2. The Bankruptcy Judge erred in finding that the Barclay Group and Sunset Pacific are the alter egos of the Debtor.
3. The Bankruptcy Judge erred in calculating the amount of the damages for which the Debtor was found to be liable.

[Signature on following page]

Respectfully submitted,

Cengiz J. Comu  
14873 Oaks North Place  
Dallas, Texas 75254  
(972) 965-2545 – Telephone  
Email: [cjcomu@gmail.com](mailto:cjcomu@gmail.com)

By: \_\_\_\_\_

Cengiz J. Comu  
*Pro Se*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11 day of September, 2014, a true and correct copy of the foregoing document was sent via electronic means or by first class mail, postage prepaid to the persons shown below:

Kendyl T. Hanks  
Greenberg Traurig, LLP  
300 West 6<sup>th</sup> Street, Suite 2050  
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Waxahachie, Texas 75165

By: \_\_\_\_\_

Cengiz J. Comu

IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant.

BANKRUPTCY PETITION NUMBER: 10-3269

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12(b)(6) MOTION

NOVEMBER 9, 2010

9:40 A.M. TO 9:42 A.M.

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

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Transcript produced from audio recording by:  
LINDA YORK, RPR, CSR  
CSR No. 4899, Expiration Date 12/31/15  
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13 denniso@dallas-law.com

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1                   \* \* \* P R O C E E D I N G S \* \* \*

2                   THE COURT: Is an agreement according to  
3 the docket. So let me call that, King Louie Mining, LLC  
4 versus Comu, adversary 10-3269.

5                   We'll take appearances.

6                   MR. OLSON: Your Honor, Dennis Olson for  
7 the debtor defendant.

8                   THE COURT: Okay.

9                   MR. LIPPE: Emil Lippe for the plaintiffs  
10 in the adversary.

11                  THE COURT: Okay.

12                  MR. OLSON: Your Honor, it's my 12(b)(6)  
13 motion and Mr. Lippe has filed a motion for leave to  
14 amend and an amended complaint and I have agreed that  
15 that's the proper thing to do. And then I will respond  
16 to it timely and maybe answer it or maybe re-urge my  
17 motion at some point.

18                  THE COURT: All right. Mr. Lippe, will you  
19 all upload a form of order that memorializes this just  
20 so we will have a placeholder on the docket knowing  
21 what's going on?

22                  MR. LIPPE: Okay. I can -- I already have  
23 uploaded an order --

24                  THE COURT: Oh, you have.

25                  MR. LIPPE: -- granting the motion for

1 leave to amend, but it doesn't say anything about the  
2 motion to dismiss.

3 THE COURT: All right. Well, actually I  
4 mean I will just take that order and work with it. I  
5 will reflect your announcement here and this is, you  
6 know, without prejudice obviously your right to re-urge  
7 your motion to dismiss or file a new one.

8 MR. OLSON: And I will commit to file a  
9 response within 30 days of today's date.

10 THE COURT: That's the agreement?

11 MR. LIPPE: Sure.

12 THE COURT: Okay. All right. We'll find  
13 your form of order and we will get it signed.

14 MR. LIPPE: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Adjourned.)

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CERTIFICATE

COUNTY OF LUBBOCK )

STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 16th day of  
October, 2014.?

/s/

LINDA YORK, CSR No. 4899  
Expiration Date: 12/31/15  
Cathy Sosebee & Associates  
Firm Registration No. 49  
P.O. Box 86  
Lubbock, TX 79408  
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IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant.

BANKRUPTCY PETITION NUMBER: 10-3269

---

MOTION TO DISMISS

FEBRUARY 14, 2011

10:55 A.M. TO 12:10 P.M.

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

---

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CSR No. 4899, Expiration Date 12/31/15  
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1                               \* \* \* P R O C E E D I N G S \* \* \*

2

3                               THE COURT: Motion to dismiss under Rule  
4 12(b) in the King Louie Mining, LLC versus Comu matter,  
5 Case Number 10-3269.

6                               We will take appearances in that.

7                               MR. OLSON: Good morning, Your Honor,  
8 Dennis Olson appearing for the defendant.

9                               THE COURT: All right.

10                              MR. LIPPE: Emil Lippe for the plaintiff.  
11 Apologize for being late, Your Honor. The parking  
12 garage was backed up and the scanner downstairs wasn't  
13 working.

14                              THE COURT: Okay. Well, thank you. We did  
15 get the message that you were running late. I  
16 appreciate the phone call.

17                              All right. Mr. Olson, I think we've had a  
18 setting on this once before and now we're back, right?

19                              MR. OLSON: Yes, ma'am. On the eve of the  
20 last hearing Mr. Lippe timely filed a motion to amend  
21 and tendered his amended pleading, and I think that  
22 mooted that hearing, and I said as much. And the Court  
23 told us to get an order entered.

24                              And upon reviewing the first amended  
25 complaint, I stand on my original 12(b)(6) motion. And

1 today I would like to go into that in some detail.

2 THE COURT: Okay.

3 MR. OLSON: May I proceed?

4 THE COURT: You may.

5 MR. OLSON: In order to revoke a discharge,  
6 you not only have to prove that you had grounds for  
7 denial of discharge, but when you come in post discharge  
8 you have to also meet the burden of showing why you  
9 didn't timely file your objection. In this case what is  
10 it that the plaintiff has learned post discharge that  
11 the plaintiff didn't know before the discharge was  
12 entered.

13 And, you know, I think that we win this  
14 case on the merits on both issues if we go to trial, but  
15 defendants shouldn't have to be put to trial or even  
16 discovery until the plaintiff plainly tells this Court  
17 what it is that he did not know when this discharge was  
18 entered and why he thinks that now gives him the right  
19 to bring this 727.

20 Now, it's a process that's not available to  
21 a plaintiff that simply ignores the deadline to file a  
22 727. And in this case when you review that amended  
23 complaint it's obvious that this plaintiff has hounded  
24 this defendant for years. And at the 361 meeting  
25 plaintiffs' counsel appeared and grilled the defendant

1 extensively on things that he's complaining about in  
2 this complaint.

3                   And as a result of that, the trustee asked  
4 the defendant to bring a voluminous amount of books and  
5 records to her office, which the debtor did. And on  
6 March 24th, Mr. Lippe reviewed all those documents. And  
7 after March 24th, the trustee and Mr. Lippe had until  
8 April 12th to file a complaint, which they didn't do,  
9 file an extension, which they didn't do, seek a 2004,  
10 which they didn't do.

11                   Now, if you look at the complaint, he says  
12 that the defendant controls a couple of companies and so  
13 on. Well, if you look at Schedule B and statement of  
14 financial affairs 18, those things were in the  
15 schedules. So I think we're entitled to know exactly  
16 what is it that he learned after this discharge,  
17 April 14th, that entitles him to come in six months  
18 later and file this complaint.

19                   Now, in tracking the complaint the first  
20 amended complaint, certainly through the first 20  
21 paragraphs ending on Page 6, these are all things that  
22 even the plaintiff had known for a long time  
23 prebankruptcy and predischarge in the case of Paragraph  
24 20.

25                   So on Paragraph 21 he starts saying well,



1 we determined that he's got this complex structure and  
2 that he controls this thing. Two things, again, Exhibit  
3 B and statement of financial affairs Paragraph 18 told  
4 everybody upfront that he controlled these two entities,  
5 and we gave the trustee the tax return and the other  
6 books and records.

7                   He refers in Paragraph 21 to Exhibit B as  
8 some evidence of something. Well, Exhibit B is  
9 consistent with what we put in our schedules and  
10 statement of financial affairs, but more importantly,  
11 it's dated in 2005. It's years before the filing of the  
12 bankruptcy.

13                   In Paragraph 22, the allegation is that he  
14 transferred controlling interest to Sunset Pacific. I  
15 assume that that's some allegation of a fraudulent  
16 transfer. Number one, there's no allegation that that  
17 was done within a year. Number two, we deny it's a  
18 fraudulent transfer. Number three, the trustee and  
19 Mr. Lippe were made available copies documenting that  
20 transfer on December 31st -- I'm sorry -- on January 1st  
21 of 2006. This bankruptcy was filed December 31st of  
22 2009. That transfer, even if it were fraudulent, which  
23 we deny, would not be the basis for denial of a  
24 discharge.

25                   THE COURT: Okay. I'm going to interrupt.

1 I don't show where this first amended complaint was  
2 filed. I was disturbed that in my pile of paper I have  
3 the original complaint and then your newest motion to  
4 dismiss and his response, and I'm like where is the  
5 first amended complaint. I'm looking on the docket.  
6 It's not on the docket.

7 MR. OLSON: His response that he filed  
8 Friday refers to a docket number for the amended  
9 complaint -- well, I say that, I don't see it either.

10 THE COURT: Mr. Lippe --

11 MR. OLSON: Docket number eight, docket  
12 entry number eight. It's footnote eight on Page 5 of  
13 the response he filed Friday.

14 THE COURT: Docket number -- it looks  
15 (inaudible) -- it hasn't been separately filed, first  
16 amended complaint. Okay.

17 MR. OLSON: If that entitles me to relief,  
18 I will take it.

19 THE COURT: It just explains why I don't  
20 have it in my pile of paper I studied before coming out  
21 here. Okay. Well, now I have pulled up the document so  
22 I can follow with you. Okay. You were talking about  
23 individual paragraphs and I couldn't --

24 MR. OLSON: Yes, ma'am.

25 THE COURT: -- follow you. Okay.

1 MR. OLSON: The first 20 paragraphs ending  
2 on Page 6, I said none of that is possibly anything that  
3 was learned postdischarge. And I was talking about  
4 Paragraph 21 --

5 THE COURT: Okay. I'm with you now.

6 MR. OLSON: -- the transfer and -- 21 and  
7 22. The schedules and statement of financial affairs  
8 clearly show that the defendant debtor runs these  
9 entities for the benefit of others, Sunset Pacific for  
10 his wife; Barclay Group for Mr. Brown. That is simply  
11 nothing that was learned postdischarge.

12 In support of Paragraph 21, the last  
13 sentence refers to Exhibit B. If you look at it, it's a  
14 memorandum dated in 2005. In Paragraph 22 he's talking  
15 about the transfer of the controlling interest of Sunset  
16 Pacific to his wife for no consideration. My point  
17 there is that was done January 1st, 2006. All those  
18 documents have been reviewed by the trustee and  
19 Mr. Lippe. Even if there were fraudulent transfers in  
20 that time frame, they wouldn't be the basis for denial  
21 of a discharge.

22 I don't believe that plaintiff can with a  
23 straight face tell this Court that in Paragraph 22 he  
24 wasn't aware of these things. That's my point. Exactly  
25 what is it that you didn't know. And why didn't you

1 know it. How come you didn't file a 727 timely?

2 Because if you just missed the deadline, it's just too  
3 bad.

4 And I think that my client is entitled to  
5 that before he's required to jump through a bunch of  
6 hoops responding to a bunch of allegations, Your Honor,  
7 that are frankly noncompliance with Rules 8 and 9 and  
8 are simply conclusions. My brief addresses those points  
9 as to what -- if we were going to proceed, I think he  
10 needs to tell us. But he needs to come in and say,  
11 Judge, after the discharge here's what we learned. And  
12 he can say it's on information and belief. But what  
13 transfer are we talking about? Those transfers in '06  
14 don't count.

15 If you look at Count 1, Paragraph 32,  
16 that's an example of what I'm talking about. Debtor  
17 committed fraud by concealing and failing to disclose  
18 assets and sources of income which was required by law  
19 to disclose. What was not disclosed? What asset are we  
20 talking about? And when did you learn that? And why  
21 didn't you seek a 2004 or an extension or file your 727?

22 The succeeding paragraphs talk about the  
23 transfers to Sunset Pacific. Again, plaintiff is on  
24 actual knowledge that transfer was January 1st, 2006.  
25 The plaintiff has reviewed the documents. Accordingly,

1 Your Honor, we feel that we are entitled to either  
2 specific pleadings addressing the points that I have  
3 been talking about or if plaintiff takes the position,  
4 "well, Judge, I can't plead any more specifically than  
5 that," then I think I'm entitled to dismissal of the  
6 complaint.

7 Thank you.

8 THE COURT: Thank you.

9 Mr. Lippe.

10 MR. LIPPE: Perhaps we should have filed  
11 the amended complaint separately. The order provided  
12 that it was deemed filed. I probably should have for  
13 clarity sake submitted a copy thereafter.

14 But going to the specifics, it's rather  
15 inconsistent. He's saying that we've got a duty to  
16 plead with specificity, yet if you look at his so-called  
17 brief, it's basically a page long and it is conclusory  
18 and just recites boilerplate statements -- do not --  
19 allegations do not establish that it was obtained by  
20 fraud or that you discovered until afterward. There's  
21 no specificity in what he's saying.

22 So what he's doing is saying that you've  
23 got to be specific, but I can wait until the hearing and  
24 then start coming up with things that I say you failed  
25 to meet your burden on. I've looked at the -- pardon

1 me -- at the schedules. And counsel very artfully goes  
2 through Paragraph 22 of the amended complaint and then  
3 he skips the Paragraph 30 of the amended complaint and  
4 he talks about a transfer that allegedly occurred in  
5 2006.

6 But if you look at Paragraph 24, we  
7 specifically allege that plaintiffs were not aware of  
8 the fraudulent transfers, hidden assets and employment  
9 positions of Comu prior to discharge. And then  
10 beginning in Paragraph 25 and continuing through 29 we  
11 specify these. And I think it's quite detailed.  
12 Consulting services and disguised ownership interest in  
13 partners National Real Estate, LLC. Going down a few  
14 points, I'm looking at Page 7 of Paragraph 25 sports  
15 memorabilia actually owned by Sun Sports which  
16 disappeared when Sun Sports ceased doing business.

17 We have discovered through information that  
18 we obtained after the discharge that Comu has been  
19 selling restricted stock through the Barclay Group.

20 Now, counsel states that the ownership was  
21 disclosed in the schedules. What was disclosed was a  
22 structure where "my wife owns 99 percent of Sun Sports  
23 and Mr. Brown owns 99 percent of the Barclay Group, so,  
24 golly, gee, Your Honor, I only own one percent of the  
25 holding company and then I only own one percent of the

1 main entity thereunder." And those we are saying are  
2 fraudulent they are simply false representations to the  
3 Court.

4 In fact, although nominally his wife may  
5 own 99 percent and nominally Mr. Brown, who resides  
6 somewhere overseas, may own 99 percent; in fact, if you  
7 look at who signs the bank accounts, who has control  
8 over the email accounts, who sends out the  
9 correspondence, who negotiates the transactions, who  
10 provides the consulting services and who controls the  
11 money, it's all C.J. Comu. And --

12 THE COURT: Let me ask you to address this  
13 though. I don't see any details of when you discovered  
14 this. You say after the discharge. But not when or  
15 how. I mean Mr. Olson is right that 727(d) is a pretty  
16 extraordinary procedure. We have tight deadlines to  
17 object to discharge in a bankruptcy and we have a  
18 procedure under Rule 4004 where you can extend the --  
19 move to extend the time if you're, you know, looking at  
20 a complex financial picture, needing discovery and the  
21 Court pretty generously grants those in, you know, on  
22 daily basis, we get those kind of motions.

23 So when you come in after the fact, we do  
24 need specifics when you discovered these things and how  
25 and why it was that you didn't get information before

1 the discharge order. I'm not seeing that in the  
2 complaint.

3 MR. LIPPE: Well, we have alleged generally  
4 that it was thereafter. If we have to be more specific  
5 than that, then it's going -- I feel we're getting into  
6 discovery at this point. It is Mr. Comu who had the  
7 burden to come forward and disclose his assets. In  
8 fact, we had an informant who had been a former business  
9 partner and unhappy with Mr. Comu who furnished us with  
10 a lot of this detail.

11 One of the items, for example, is a loan of  
12 \$90,000 that Mr. Comu arranged while he was in  
13 bankruptcy and advanced to a company that the Barclay  
14 Group had an interest in. And we didn't find out about  
15 that until months after the discharge. If he had  
16 \$90,000 available, it certainly should have been  
17 disclosed somehow to the Court in one of these  
18 schedules, one of these subcategories.

19 We have detailed documents indicating  
20 various contacts with and business relationships with  
21 these various entities that are detailed in Paragraph  
22 25, none of which we got from the trustee and none of  
23 which Mr. Comu disclosed to the trustee.

24 In fact, he's been participating in some  
25 extensive consulting scheme through the Barclay Group,



1 and he's just saying, "oh, I'm just a one percent owner  
2 of an entity that I only own one percent of." And  
3 really he's the one running everything.

4 I think the motion is defective because  
5 it's conclusory. Under the pleading standards all we  
6 have to demonstrate is that there's a plausible basis  
7 for recovery. If he wants to conduct discovery and then  
8 file a motion for summary judgment and go at these point  
9 by point, then I believe that would be appropriate.

10 The Court certainly is correct that we have  
11 that duty to demonstrate that we didn't know and why we  
12 didn't apply for an extension. But the bottom line is  
13 is that we didn't know because he had concealed it. So  
14 it's hard to prove a negative. The schedules clearly  
15 show an absence of disclosure. The trustee might very  
16 well be deposed or asked to furnish an affidavit in  
17 connection with the motion for summary judgment.

18 THE COURT: Who is the trustee?

19 MR. OLSON: Diane Reed, Your Honor.

20 MR. LIPPE: Diane Reed, yes.

21 THE COURT: Okay. I see that you have  
22 alleged that certain transfers should be avoided. Those  
23 are really the trustee's claims and causes of action to  
24 pursue, aren't they?

25 MR. LIPPE: Yes. And I'm not sure what we

1 do where -- in a situation where the trustee should  
2 pursue something and has not pursued it. I have gone  
3 over Judge Houser's opinion in the Faulkner matter,  
4 Faulkner/Kornman matter, and I think that a lot of the  
5 reasoning of fraudulent transfers and going back a  
6 number of years prior to the discharge would apply in  
7 this case.

8                   And I, you know, I believe that these  
9 certainly should be. If we can demonstrate to the Court  
10 that Mr. Comu actually controls and runs the Barclay  
11 Group and Sunset Pacific and that his wife is a mere  
12 figurehead, doesn't have a clue as to what's going on  
13 with either of those entities and is engaged in social  
14 work and charity ventures rather than the business of  
15 either of those two entities, then I think some relief  
16 should be available for the benefit of the creditors.

17                   Now, yes, we have been after Mr. Comu for  
18 years. Yes, we obtained judgments against him in New  
19 York state court. Yes, there have been disputes going  
20 back to 2004 with Mr. Comu. He has a long smattered  
21 history of running one company after another into the  
22 ground. And my client is just continuing to pursue him.  
23 He just makes people give up.

24                   We will certainly comply with any  
25 directions of the Court -- pardon me -- but I believe

1 that particularly in light of the fact that the motion  
2 to dismiss is so vague, so conclusory. We do have very  
3 specific details of assets. Marathon Management, Grey  
4 Point Partners, New Edge Consulting, and a number of  
5 others is set forth, and we have alleged that we didn't  
6 learn about that until after the discharge.

7 I think we have met the specificity  
8 standard for pleading. Now, it's another thing on  
9 summary judgment. And I suspect Mr. Olson will want  
10 discovery on how you found out about this and that, and  
11 we will go back and forth. But we would respectfully  
12 request that the motion be denied.

13 THE COURT: Okay. Mr. Olson, 60 seconds, I  
14 will give you the last word.

15 MR. OLSON: Thank you, Your Honor.

16 In the statement of financial affairs  
17 number 18 and in Schedule B we made it clear to  
18 everybody that Mr. Comu was running these two companies.  
19 That is not a basis for denial of discharge. And it's  
20 certainly nothing new.

21 Similarly, transfers made more than a year  
22 prepetition are not a basis for denial of discharge.  
23 The trustee knows that. The trustee didn't file a 727.  
24 The trustee is not out of time if she thinks that  
25 transfer was fraudulent. But I suspect she has

1 concluded that it was not fraudulent because she hasn't  
2 filed her complaints yet.

3 Thank you.

4 THE COURT: Thank you. All right. I need  
5 to take a short break and look more carefully at the  
6 complaint and the schedules.

7 MR. OLSON: Oh.

8 THE COURT: Yes.

9 MR. OLSON: If I had any time left, my  
10 second motion to dismiss is not my brief. It's a  
11 separate document. And it's very specific about what's  
12 wrong with the first amended complaint.

13 THE COURT: Well, let me make sure I  
14 understand what you're talking about.

15 MR. OLSON: Well, he --

16 THE COURT: I'm looking at a four-page  
17 document or -- no, that's including the certificate of  
18 service -- a three-page document. What do you have?

19 MR. OLSON: Yes, ma'am. He was referring  
20 to my brief as being conclusory. That pleading is very  
21 specific what's wrong.

22 THE COURT: Okay. All right. Thank you.  
23 All right. We're going to take about a 20-minute break.  
24 I will come back at 11:45 and rule.

25 THE CLERK: All rise.

1 (Break taken.)

2 THE COURT: We're going back on the record  
3 now in the Adversary Number 10-3269 styled King Louie  
4 Mining, LLC versus Comu.

5 Before the Court is, of course, the debtor  
6 defendant's motion to dismiss plaintiff's complaint for  
7 alleged failure to state a claim. The standard that  
8 applies to a Rule 12(b)(6) motion, such as this, is that  
9 a complaint is to be charitably construed with all  
10 well-pleaded factual allegations being accepted as true  
11 and with any reasonable inferences from those facts  
12 being drawn in favor of the nonmoving party.

13 Rule 12(b)(6) motions are disfavored in the  
14 law and shall be cautiously granted. And a well-pleaded  
15 complaint may proceed even where it strikes a judge that  
16 actual proof of those facts may be speculative. Only  
17 when the allegations in the complaint, however true,  
18 could not raise a claim of entitlement to relief should  
19 there be dismissal.

20 Twombly and Iqbal are the most recent U.S.  
21 Supreme Court decisions articulating the standards under  
22 12(b)(6). The Court really starts, it should add, with  
23 Rule 8(a)(2). Under Federal Rule 8(a)(2), a complaint  
24 must provide a short and plain statement of the claim  
25 showing that the pleader's entitled to relief.

1                   And then where we have a fraud allegation,  
2 the Court must also look to Rule 9. Rule 9(b)  
3 specifically requires that when pleading any type of  
4 fraud, quote, the circumstances constituting fraud shall  
5 be stated with particularity. The 5th Circuit has  
6 elaborated there that when alleging fraud the pleader  
7 should allege the time, place, and contents of any false  
8 representations as well as the identity and person  
9 making those false representations and what the person  
10 obtained thereby.

11                   And then turning back to Twombly and Iqbal,  
12 the Supreme Court elaborated in those recent cases that  
13 to survive the motion to dismiss a civil complaint must  
14 contain sufficient factual matter accepted as true to  
15 state a claim to relief that is plausible on its face.

16                   Basically there's a two-pronged approach  
17 articulated in those cases. First, determine what is a  
18 factual allegation versus a legal conclusion and only  
19 factual allegations will be accepted as true. And then  
20 second prong, you determine whether the factual  
21 allegations state a plausible claim for relief.

22                   Turning to our adversary here, here there  
23 are lots of factual allegations, alleging concealment of  
24 assets in entities in which the debtor allegedly has a  
25 beneficial interest and failure to properly disclose

1 some of this in the debtor's bankruptcy schedules and  
2 statement of financial affairs. The legal conclusions  
3 are that this entitles the plaintiff to revocation of  
4 discharge under 727(d) and (e) and may be also  
5 declaratory judgment that the assets of certain of these  
6 entities be determined to be the debtor and may be also  
7 avoiding certain transfers under 544 and the Uniform  
8 Fraudulent Transfer Act.

9 Here there is plenty of flesh on the bone,  
10 so to speak. And the Court can infer a plausible cause  
11 of action. But there is not quite the clarity that I  
12 think Rule 8 and 9 require, but again, the law favors --  
13 disfavors dismissals and so the Court is going to give  
14 the plaintiff one more opportunity to amend here.

15 Specifically, the Court believes that the  
16 first amended complaint must be amended to state which  
17 exact subsection of Section 727(d) warrants revocation  
18 of discharge and also when and how plaintiff discovered  
19 the facts that form the basis for revocation of  
20 discharge.

21 While Mr. Lippe does make a good point that  
22 this borderlines on information that you might expect a  
23 party to simply take discovery on, I think in the unique  
24 context of 727(d) more information is required because  
25 we have a policy in bankruptcy of favoring certainty



1 sooner than later as to whether a debtor is going to  
2 obtain a fresh start. And we have very strict deadlines  
3 in Rule 4004, and 4004 typically requires a motion  
4 before a deadline hits to object to discharge asking for  
5 an extension to file a late objection to discharge.

6 So in a 727(d) context, I do think more  
7 specificity is required in a pleading regarding when and  
8 how plaintiff discovered facts that form the basis for  
9 revocation of a discharge.

10 The Court also with respect to Section 544  
11 and the Uniform Fraudulent Transfer Acts -- Uniform  
12 Fraudulent Transfer Act believes that we need more  
13 specificity. Not only do we need a better articulation  
14 of exactly what property is alleged to have been  
15 transferred when and the exact provisions of the Uniform  
16 Fraudulent Transfer Act that are being relied upon, but  
17 the Court is concerned about standing. I dangled that  
18 out there.

19 I think under 5th Circuit law and  
20 provisions of the Bankruptcy Code, it is the trustee,  
21 the Chapter 7 trustee who has standing to avoid and  
22 recover property that may have been fraudulently  
23 transferred. And we are still within a time frame it  
24 would appear to do that.

25 There is 5th Circuit law that may apply

1 here and I'm talking about an old case from the 1980s,  
2 Louisiana World Exposition that talks about a procedure  
3 you go through at least in a Chapter 11 context when a  
4 debtor -- there's no trustee -- when a debtor is not  
5 going forward with what might be a colorable claim, it  
6 says that a party, a creditor who might want to go  
7 forward has to bring a motion to the Court showing it  
8 has a, quote, colorable claim, it made a demand on the  
9 trustee or debtor and the trustee or debtor  
10 unjustifiably refused. So now creditor is seeking  
11 standing.

12 I had actually written some opinions  
13 questioning whether that applies in Chapter 7,  
14 questioning whether anyone other than a trustee ever  
15 ought to be able to go forward with a fraudulent  
16 transfer act. A clear exception would be if the  
17 creditor had brought a fraudulent transfer action  
18 prepetition in state court. So I think there would  
19 clearly be dual standing, co-standing.

20 But here I think the 5th Circuit in this  
21 Louisiana World case makes clear that it's, again, even  
22 though it's a Chapter 11 case, it's really the trustee  
23 with initial standing. And you have to obtain standing  
24 from the court by filing a motion and giving the trustee  
25 notice of your motion.

1                   So anyway, again, a second amended  
2 complaint will be allowed here, but I'm going to need  
3 not only more articulation on the fraudulent transfer  
4 cause of action, but I'm going to have to have a clear  
5 showing of standing.

6                   All right. I am going to give 20 days for  
7 the second amended complaint to be filed; otherwise, the  
8 motion to dismiss would be granted. And then debtor  
9 defendant would have 20 days to answer or otherwise  
10 respond after the second amended complaint is presumably  
11 filed.

12                  All right. So I would like the lawyers to  
13 upload to me an order denying the motion to dismiss  
14 conditional on a second amended complaint being filed  
15 within 20 days of entry of this order addressing the  
16 issues announced by the Court orally.

17                  Can I get the two of you -- Mr. Olson, I'll  
18 ask you to take the laboring oar on that but run it by  
19 Mr. Lippe before you submit it to the Court.

20                  MR. OLSON: Yes, ma'am. We will arrive at  
21 a form of an agreed order.

22                  THE COURT: Okay. Thank you.

23                  MR. OLSON: Thank you.

24                  THE COURT: We stand adjourned.

25                  (Adjourned.)

CERTIFICATE

COUNTY OF LUBBOCK )

STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 16th day of  
October, 2014.

/s/

LINDA YORK, CSR No. 4899  
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IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs,

V.

CENGIZ J. COMU a/k/a CJ COMU,

Defendant.

DIANE G. REED, TRUSTEE.

Intervenor, Co-Plaintiff, and Third-Party  
Plaintiff,

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant,

and

PHYLLIS E. COMU, BERNARD D. BROWN, THE BARCLAY GROUP,  
INC., AND SUNSET PACIFIC, L.P.,

Third-Party Defendants.

BANKRUPTCY PETITION NUMBER: 10-03269-sgj

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REQUEST FOR REVOCATION OF DISCHARGE

MAY 2, 2012

2:31 P.M. TO 2:46 P.M.

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

1 Transcript produced from audio recording by:  
LINDA YORK, RPR, CSR

2 CSR No. 4899, Expiration Date 12/31/15  
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1 \* \* \* P R O C E E D I N G S \* \* \*

2 THE COURT: King Louie Mining, LLC versus  
3 Comu adversary 10-3269, let's take that first.

4 MR. LIPPE: Your Honor, Mr. Olson is  
5 working his way through security right here, so he will  
6 be in in just a moment.

7 THE COURT: Okay. Well --

8 MR. LIPPE: Emil Lippe for the creditor and  
9 the plaintiff in the adversary proceeding King Louie  
10 Mining.

11 THE COURT: Okay.

12 MR. WANDER: Your Honor, this is David  
13 Wander. I'm appearing telephonically. It's a little  
14 hard to hear. I'm co-counsel for the plaintiff and I  
15 have submitted an application to be admitted pro hac  
16 vice. I believe we may be making some small minor  
17 amendments to that application. And I request Your  
18 Honor's permission to be heard at this hearing.

19 THE COURT: Okay. That's fine.

20 MR. ELMQUIST: Good afternoon, Your Honor  
21 David Elmquist on behalf of Diane Reed, the trustee.

22 THE COURT: All right.

23 MR. OLSON: Good afternoon, Your Honor.  
24 Dennis Olson representing the debtor defendant.

25 THE COURT: All right. Well, let's make

1 sure that everyone speaks into the mic' up here at the  
2 podium, especially so Mr. Wander can hear what's  
3 happening here.

4 For the record, we have had this adversary  
5 proceeding pending since September 3rd, 2010. It is an  
6 objection to or I guess request for revocation of  
7 discharge in the Chapter 7 bankruptcy case of Mr. Comu.  
8 We have had this adversary proceeding abated for several  
9 months. We have heard discussions I guess at prior  
10 hearings that the trustee Ms. Reed may be evaluating  
11 whether she might want to intervene or substitute in in  
12 this adversary proceeding.

13 So anyway I felt the need to check in here  
14 and see what is going on and see if we need to get a  
15 scheduling order in place, see if we have by chance a  
16 settlement in the works, anything of that nature. So  
17 who would like to go first.

18 MR. ELMQUIST: Your Honor, if I might I  
19 will start out here because I was the one that caused  
20 the abatement, or my client.

21 Your Honor, the Court is accurate that the  
22 trustee is evaluating -- the trustee is still evaluating  
23 -- the trustee's made the determination that there will  
24 be a complaint and intervention filed. The scope of  
25 that complaint is not yet determined, largely because we

1 have not yet completed the 2004 examination.  
2 Examination's required to determine the claims to  
3 present. We did conduct, in accordance with agreements  
4 of counsel for the trustee and the debtor, the 2004  
5 examination on November 30th.

6 Mr. Comu has been involved in a number of  
7 businesses and business transactions that to some degree  
8 spill over to this Chapter 7 case from the standpoint of  
9 what interest he held and whether there is in fact  
10 property interests that are property of this estate.

11 So there was an extensive request for  
12 production of documents, bank records. Most of but not  
13 all of the documents we requested for that examination  
14 were provided. And Mr. Olson has and his client have  
15 been cooperative in that endeavor but they simply could  
16 not get together everything that we felt we needed for  
17 the examination. So at that examination we agreed that  
18 we would conduct the examination that day, but we would  
19 resume the examination once we got the additional  
20 documents.

21 And during the course of the examination,  
22 additional documents were requested. Your Honor, to be  
23 quite honest, after that examination was at the end of  
24 November I think counsel -- I certainly got busy with  
25 other matters and we didn't press it. So we are now

1 pressing it from the standpoint of getting that  
2 examination concluded. I have discussed with Mr. Olson  
3 getting that concluded examination done and the  
4 documents that I had asked for some time ago to me so we  
5 can conduct and conclude that examination in the next 30  
6 days.

7                   There is one, perhaps two other 2004s that  
8 we need to do in connection with the evaluation of the  
9 complaint to file. And that had to do with, again, Mr.  
10 Comu's interest in business ventures that involve his  
11 wife and a business venture that involves a partner or  
12 partners in a company called Barclay Group which has  
13 vast holdings in a company called Green Automotive,  
14 which may or may not be property of this estate  
15 depending on what we determine with respect to those  
16 interests.

17                   But we simply have not been able to  
18 conclude that portion of the investigation. We  
19 understand this case has been pending for some time. We  
20 need to move it forward. I talked to Mr. Olson about a  
21 scheduling order and other issues with respect to where  
22 this case stands. And subject to the Court's approval,  
23 what we anticipate is the complaint intervention being  
24 filed as prompt as we can after the conclusion of those  
25 examinations, which we think we can get done in the next

1 60 days. So 60 days to complete the examinations and  
2 within 30 days thereafter the complaint and intervention  
3 is filed, in which we will be determining or asserting  
4 the claims the trustee think are appropriate for this  
5 action.

6                   The Court may recall that this is a  
7 revocation of discharge action filed by King Louie along  
8 with issues with respect to alleged fraud or fraudulent  
9 transfers. That is part of what we're looking at and  
10 ultimately trying to determine whether there is, in  
11 fact, the trustee's perspective, a basis for seeking  
12 revocation of discharge.

13                   We don't take that lightly, so we're  
14 studying it very carefully. And we have the examination  
15 to conclude before we can make that final determination.  
16 I believe that King Louie intends to stay in the case  
17 but to a certain extent if the trustee decides that  
18 there's basis for revocation of discharge that King  
19 Louie would sort of take a back seat to the trustee in  
20 terms of the prosecution of this action.

21                   We do, given the fact this case has been  
22 pending, we do intend to move it forward as quickly as  
23 we can and complete this examination. I think the  
24 scheduling order, in my view, recommendation would be  
25 the scheduling order wait until we have the complaint

1 and intervention on file, might also note, Your Honor,  
2 that there is a pending motion to dismiss under 12(b)(6)  
3 that the debtor filed that's just been held in abeyance.  
4 I discussed that with Mr. Olson, and he felt it more  
5 appropriate to address that motion to dismiss after the  
6 complaint and intervention is filed by the trustee  
7 because there may be grounds to seek dismissal of the  
8 trustee's claims along with the claims that King Louie  
9 has asserted under 727.

10 So I think Mr. Olson feels that the  
11 appropriate way to handle the motion to dismiss is after  
12 the complaint and intervention is filed. So once that  
13 -- once the complaint and intervention is filed I think  
14 it is certainly time to get a scheduling order in place,  
15 we would move forward quickly with litigation  
16 thereafter.

17 THE COURT: All right. Who else wishes to  
18 be heard?

19 MR. WANDER: Your Honor, David Wander. I  
20 just want to affirm what the trustee has said from point  
21 of view of counsel for King Louie, I think it was well  
22 stated.

23 THE COURT: Okay. Mr. Olson, anything to  
24 add for the debtor?

25 MR. OLSON: Your Honor, I don't think I

1 have anything to add today. Mr. Elmquist and I have  
2 been working along on this and I think that once he  
3 determines what he wants to allege then we can sit down  
4 and figure out if he's going to be --

5 MR. WANDER: Excuse me, Mr. Olson, could  
6 you -- Your Honor, if you could ask Mr. Olson to speak  
7 directly in the mic', I can't hear what he's saying.

8 THE COURT: All right. He's going to  
9 repeat himself.

10 MR. OLSON: Once Mr. Elmquist has filed his  
11 complaint so that we know what he's alleging and we know  
12 whether King Louie is still going to have any standing  
13 or whether they're going to take a back seat, to use  
14 Mr. Elmquist's phrase, and I think we would be ready to  
15 address the 12(b)(6) motion and whatever I file in  
16 response to the complaint and intervention and issue a  
17 scheduling order and I think we can probably agree on a  
18 scheduling order.

19 THE COURT: Okay. All right. Well, the  
20 Court is going to go ahead and continue the abatement  
21 for another 90 days. I don't know who was the preparer  
22 of the last agreed motion to abate. Was it you,  
23 Mr. Elmquist?

24 MR. ELMQUIST: It was, Your Honor. And I'm  
25 happy to prepare this order.



1 THE COURT: All right. If you can prepare  
2 it.

3 MR. ELMQUIST: I'll run it by counsel.

4 THE COURT: Let's make it go through  
5 August 1st and then -- and if you could coordinate with  
6 Ms. Davis, I would like to have another status  
7 conference the week of August 1st shortly after  
8 August 1st, which the Court would be happy to cancel if  
9 by that point we have motions to intervene filed and set  
10 for hearing, we can just go forward with the hearing on  
11 that rather than have the status conference.

12 All right.

13 MR. ELMQUIST: Very good, Your Honor.

14 THE COURT: All right. So it sounds like  
15 we will see you in August.

16 MR. ELMQUIST: Thanks so much, Your Honor.

17 THE COURT: All right. Thank you. We'll  
18 hang up on you, Mr. Wander.

19 MR. WANDER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Adjourned.)  
22  
23  
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25

CERTIFICATE

COUNTY OF LUBBOCK )

STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 16th day of  
October, 2014.

/s/ \_\_\_\_\_  
LINDA YORK, CSR No. 4899  
Expiration Date: 12/31/15  
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IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs,

V.

CENGIZ J. COMU a/k/a CJ COMU,

Defendant.

DIANE G. REED, TRUSTEE.

Intervenor, Co-Plaintiff, and Third-Party  
Plaintiff,

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant,

and

PHYLLIS E. COMU, BERNARD D. BROWN, THE BARCLAY GROUP,  
INC., AND SUNSET PACIFIC, L.P.,

Third-Party Defendants.

BANKRUPTCY PETITION NUMBER: 10-03269-sgj

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HEARING

JULY 31, 2012

9:48 A.M. TO 9:57 A.M

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

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3 Cathy Sosebee & Associates  
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5 Lubbock, TX 79408  
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1                   \* \* \* P R O C E E D I N G S \* \* \*

2                   THE COURT: All right. Turning back now to  
3 matter number two, King Louie Mining, LLC versus Comu,  
4 adversary 10-3269.

5                   We'll take appearances from counsel.

6                   MR. WANDER: Your Honor, David Wander of  
7 Davidoff, Hutcher & Citron, co-counsel for plaintiff  
8 King Louie.

9                   THE COURT: Okay. Thank you.

10                  MR. ELMQUIST: Good morning, Your Honor,  
11 David Elmquist on behalf of Diane Reed, trustee.

12                  THE COURT: Okay.

13                  MR. LIPPE: Emil Lippe on behalf of  
14 plaintiff King Louie with Mr. Wander.

15                  THE COURT: Okay.

16                  MR. OLSON: Dennis Olson representing the  
17 debtor defendant.

18                  THE COURT: Okay. All right where do  
19 things stand here? We've got a pretty old adversary  
20 proceeding now and we have had it in an abatement phase  
21 for many months. I think our last reports,  
22 Mr. Elmquist, were the trustee continued to evaluate  
23 whether she wanted or thought it was appropriate to  
24 intervene. The nature of the adversary is a request to  
25 revoke the debtor's discharge, correct, as well as

1 fraudulent transfer claims.

2 MR. ELMQUIST: That is correct, Your Honor.

3 THE COURT: Okay.

4 MR. ELMQUIST: Let me give the Court a  
5 brief report on where we are. We are close to  
6 concluding and have presently scheduled the final  
7 examinations, the conclusion of Mr. Comu's 2004  
8 examination and we have also scheduled two other  
9 examinations that we felt we needed to do based upon the  
10 examinations and document review we have done to date  
11 that being Mr. Comu's wife and Mr. Comu's tax accountant  
12 preparer.

13 THE COURT: Okay.

14 MR. ELMQUIST: Those are scheduled for time  
15 frame of August 7 to August 9. I have discussed with  
16 Mr. Olson the fact that once we have that examination  
17 concluded, the trustee can and will proceed to file a  
18 motion to intervene and complaint and intervention. Our  
19 claims won't -- we won't be adopting the claims that  
20 King Louie has filed. We will have other claims to  
21 assert. But they arise out of the same transactions  
22 that are set forth in the King Louie complaint, so we  
23 think -- and I think counsel has agreed that it's  
24 appropriate that the trustee's claims be tried along  
25 with the King Louie claims that are asserted.

1                   Specifically with respect to fraudulent  
2 transfer claims, Your Honor, based upon what we have  
3 seen, we don't believe that there are fraudulent  
4 transfer claims. There are claims relating to transfers  
5 but not fraudulent transfer claims that would require  
6 avoidance under 548.

7                   We do believe we can have a complaint on  
8 file and intend to have a complaint on file by the end  
9 of August. And we anticipate having an agreed  
10 scheduling order to submit in connection with that. I'm  
11 hopeful that the motion to intervene and the complaint  
12 and intervention will be agreed to by the debtor so that  
13 we can submit an agreed order on that and in conjunction  
14 with that so we'll have a complaint and intervention  
15 filed and in conjunction with that the parties can get  
16 together and submit a proposed agreed scheduling order  
17 to get this case back on track.

18                  Mr. Comu and his counsel have been very  
19 cooperative in terms of providing information documents  
20 but it's taken quite some time because of the breadth of  
21 the information requested and the fact that we're going  
22 to bank records that go back several years and going to  
23 a number of different business entities. It's just  
24 taking a considerable amount of time to pull all that  
25 together.



1                   But we do now have -- not everything we  
2 asked for but the lion's share of it so we can conclude  
3 those examinations and get this case moving forward.

4                   THE COURT: All right. Who else wishes to  
5 be heard?

6                   MR. LIPPE: Your Honor, Emil Lippe. The  
7 plaintiff has been ready to proceed with discovery to  
8 prepare for trial. We have supported and agreed to the  
9 trustee's investigation and happily the result of the  
10 2004 examinations and the document productions will be  
11 to shorten the discovery that would otherwise be  
12 required in the pursuit of our claims, so it has not  
13 been a fruitless delay.

14                   We will join in and support the motion to  
15 intervene at the appropriate time and will do our best  
16 to work with the trustee in moving the case forward  
17 expeditiously. Mr. Olson has been cooperative and I  
18 believe the parties can agree on a schedule that will  
19 satisfy the Court.

20                   THE COURT: All right. Mr. Olson, anything  
21 you wanted to say?

22                   MR. OLSON: Yes, ma'am, just very briefly.  
23 I believe that Mr. Elmquist when he files his plea and  
24 intervention or his complaint will not be seeking to  
25 revoke the discharge. So I think that the first order

1 of business would be to schedule our 12(b)(6) motion on  
2 the plaintiff's motion to revoke discharge. Then I  
3 think the scheduling order for whatever's left would be  
4 appropriate.

5 I also think that Mr. Elmquist and I will  
6 probably be able to settle his complaint, so just to put  
7 that into the mix. We will agree to the intervention.

8 THE COURT: All right. So there has been a  
9 12(b)(6) motion pending during all this time of  
10 abatement?

11 MR. OLSON: Yes, ma'am.

12 THE COURT: Okay. All right.  
13 Mr. Elmquist, do you -- are you able to say today  
14 whether you're going to be joining in the --

15 MR. ELMQUIST: The 727 action?

16 THE COURT: -- the 727 action?

17 MR. ELMQUIST: I can't say definitively,  
18 Your Honor. I can't say based upon what I -- what we  
19 have done thus far in the examination, document review.  
20 I'm not finding a basis for 727 revocation of discharge.  
21 But we haven't concluded the examination. But if I had  
22 to say today whether or not we would be joining in that,  
23 I would say probably not.

24 THE COURT: Okay. Did you all get to  
25 respond, Mr. Lippe, to the 12(b)(6) motion before the

1 abatement was instituted, do you even remember?

2 MR. LIPPE: I don't recall, Your Honor. I  
3 would need to look at the pleadings file. We would  
4 request probably with the passage of time and with the  
5 discovery leave to supplement our response and perhaps  
6 even amend the pleading. I would need to review the  
7 documents.

8 THE COURT: All right. Well, here is all  
9 we will do for now. I want to make sure we stick to the  
10 plan announced here today and get things on track so,  
11 Laura, we will do an order terminating abatement of the  
12 adversary proceeding. It will be a very simple order  
13 that, number one, gives a complaint to the trustee --  
14 gives a deadline to the trustee for filing her complaint  
15 and intervention of August 31st.

16 And then I'm going to further submit a  
17 deadline for the parties to submit an agreed form of  
18 scheduling order by September 14th and then if the  
19 parties do not, then the Court's going to simply  
20 generate the standard form of scheduling order that the  
21 clerk's office would normally generate absent an agreed  
22 order.

23 And I am thinking probably we'll stick in a  
24 January trial docket call and January trial setting  
25 again absent an agreement of the parties that they want

1 to propose to the Court.

2 And then as far as the 12(b)(6) motion, I'm  
3 hoping that the parties will agree as part of the agreed  
4 scheduling order I'm anticipating, on response deadlines  
5 supplementation, and then we will contact my courtroom  
6 deputy for a setting. But if you all don't do that as  
7 part of an agreed scheduling order that you submit by  
8 September 14th, then the Court will also, as part of the  
9 scheduling order I crank out, will put in some deadlines  
10 for the 12(b)(6) motion.

11 All right. Anything else?

12 MR. ELMQUIST: No, Your Honor.

13 (Adjourned.)

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CERTIFICATE

COUNTY OF LUBBOCK )

STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 16th day of  
October, 2014.

/s/

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IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs,

V.

CENGIZ J. COMU a/k/a CJ COMU,

Defendant.

DIANE G. REED, TRUSTEE.

Intervenor, Co-Plaintiff, and Third-Party  
Plaintiff,

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant,

and

PHYLLIS E. COMU, BERNARD D. BROWN, THE BARCLAY GROUP,  
INC., AND SUNSET PACIFIC, L.P.,

Third-Party Defendants.

BANKRUPTCY PETITION NUMBER: 10-03269-sgj

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MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

OCTOBER 31, 2012

10:09 A.M. TO 10:48 A.M.

HONORABLE STACEY JERNIGAN, PRESIDING

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1 \* \* \* P R O C E E D I N G S \* \* \*

2 THE COURT: Adversary proceeding King Louie  
3 Mining, et al versus Comu, et al. This is adversary  
4 10-3269.

5 Let's start by getting lawyer appearances.

6 MR. LIPPE: Good morning, Your Honor, Emil  
7 Lippe for King Louie Mining and King Louie  
8 Enterprises --

9 THE COURT: Okay.

10 MR. LIPPE: -- Katz, plaintiffs.

11 THE COURT: Okay.

12 MR. OLSON: Good morning, Your Honor,  
13 Dennis Olson for the defendant movant.

14 THE COURT: Okay.

15 MR. ELMQUIST: Your Honor, David Elmquist  
16 on behalf of Diane Reed.

17 MR. WANDER: David Wander co-counsel for  
18 plaintiff.

19 THE COURT: Okay. We kind of had some  
20 bleed over there.

21 Mr. Wander, we're still getting appearances  
22 in the courtroom so hold on a minute.

23 MR. ELMQUIST: Thank you, Your Honor.  
24 David Elmquist on behalf of Diane Reed, the intervenor.  
25 Your Honor, the trustee has not taken a position on this

1 motion. We're here just to listen to the argument.

2 THE COURT: All right.

3 Now go ahead, Mr. Wander.

4 MR. WANDER: Yes, Your Honor, David Wander  
5 of Davidoff, Hutcher & Citron, co-counsel for plaintiff.  
6 And my pro hac vice papers have been filed with the  
7 Court by Mr. Lippe.

8 THE COURT: All right. Thank you. I think  
9 I may have already signed an order approving your pro  
10 hac vice.

11 All right. Well, I am very, very confused.  
12 We have an adversary proceeding that was filed  
13 September 3rd, 2010 in a bankruptcy case that has been  
14 on file since December 31st, 2009. We, of course, had a  
15 long period of abatement and ultimately the trustee has  
16 intervened. And it looks like the adversary proceeding  
17 is continuing to morph as I speak.

18 So let me hear what you all thought you  
19 were going to present today. All I technically have is  
20 a motion to dismiss the second amended complaint filed  
21 by King Louie Mining. That's all we technically had set  
22 today. But I see pleadings are being filed until last  
23 night, I guess, was the last one.

24 So what do you all think you're arguing  
25 this morning? And then we're going to figure out what

1 we are going to hear.

2 MR. LIPPE: Emil Lippe, Your Honor. The  
3 only thing on the docket is, as the Court said, the  
4 motion to dismiss. We -- as you may recall at the last  
5 status conference, you instructed us to reach an  
6 agreement as to a calender for (inaudible) motion to  
7 dismiss and to include that in the proposed agreed  
8 scheduling order. We did that.

9 I filed my supplementary response according  
10 to that calendar. Mr. Olson filed his reply to our  
11 latest filing according to that calendar. In his  
12 supplemental response, Mr. Olson raised certain points  
13 such as you didn't get leave to file your third amended  
14 complaint, which I'll argue the merits of that when the  
15 Court deems appropriate. But we thought it was implicit  
16 in the scheduling order; it was not explicitly stated.  
17 The Court did not explicitly grant leave at the status  
18 conference, nor did the Court even explicitly  
19 (inaudible) leave to the trustee, although we thought  
20 that was implicit in what was going on.

21 So out of an abundance of caution to  
22 respond to Mr. Olson's arguments, we are seeking leave  
23 to have our (inaudible) considered and we are seeking  
24 formal leave for permission to file our third amended  
25 complaint.

1                   And I don't know that leave is necessary  
2 for filing the third amended complaint, but we certainly  
3 want to seek leave if it is necessary. And so that's  
4 why we filed that.

5                   THE COURT: All right. So what do you  
6 think we're arguing today? I mean --

7                   MR. LIPPE: Well, the motion to dismiss.

8                   THE COURT: It's as to a second amended  
9 complaint.

10                  MR. LIPPE: Okay. If that's all that --

11                  THE COURT: And you're not even -- you're  
12 not wanting to go forward with it. You're wanting to go  
13 forward with the third amended complaint.

14                  MR. LIPPE: We have filed our third amended  
15 complaint. It does change certain legal contentions.  
16 Since we filed our second amended complaint, the trustee  
17 has intervened. The trustee is asserting claims that  
18 the Court had observed earlier. We, as creditors,  
19 didn't have standing. So we are now as creditors in the  
20 third amended complaint only asserting 727 claims which  
21 creditors do have standing to assert. So --

22                  THE COURT: Okay.

23                  MR. LIPPE: -- if the Court grants us leave  
24 to file the third amended complaint, we believe the  
25 motion to dismiss the second is moot.

1 THE COURT: All right. So let me respond  
2 to something you just said. You said in the third  
3 amended complaint --

4 MR. LIPPE: Yes.

5 THE COURT: -- you're only pursuing 727,  
6 revocation of discharge?

7 MR. LIPPE: We're seeking revocation of  
8 discharge. Maybe I cited the wrong section. And I  
9 apologize.

10 THE COURT: No, 727 is correct, but you've  
11 added eight defendants.

12 MR. LIPPE: Yes. And these defendants --  
13 these defendants are the -- we claim, the alter egos of  
14 Mr. Comu and entities under his control as of the date  
15 of filing. And we believe that in order for the Court  
16 to grant full and complete relief under the revocation  
17 of discharge and to bring in all the assets, that should  
18 have been included.

19 THE COURT: Well, bringing in assets and  
20 alter ego is wholly different from 727.

21 MR. LIPPE: Okay.

22 THE COURT: And so we seem to be back at  
23 the point the Court observed many months ago of these  
24 being estate claims and causes of action.

25 Clearly, a creditor can bring a 727

1 revocation of discharge action. But when you get into  
2 veil piercing, alter ego, bringing in assets as property  
3 of the estate, then we're back in the area of these  
4 being estate claims causes of action remedies.

5 That's, you know -- so there's the issue of  
6 your third amended complaint does more than seek  
7 revocation of discharge, and then the issue of you have  
8 standing to be doing that, in addition to, you know, was  
9 leave appropriate. So I'm kind of confused. I thought  
10 the purpose of sort of the stand-down we had and the  
11 abatement period all these months was for the trustee to  
12 evaluate did he think there were valid reasons to go  
13 against third parties and bring in assets. And then now  
14 he's filed a complaint and intervention and is doing  
15 that.

16 So why are we still going down these  
17 separate, what seem like, duplicative trails?

18 MR. LIPPE: Well, we certainly join in all  
19 the relief that the trustee is asking for and we would  
20 seek to assist and essentially try to help out --

21 THE COURT: Well, that's --

22 MR. LIPPE: -- to the extent appropriate.

23 THE COURT: -- all perfectly fine.

24 MR. LIPPE: We have added additional  
25 defendants who we believe are necessary. If the Court

1 determines that we don't have standing to bring those in  
2 at this time, we would probably, if the trustee does not  
3 choose to act with respect to those, seek leave  
4 derivatively to assert those claims in situations where  
5 the trustee has chosen not to. And I realize there are  
6 issues there that I could discuss today, but are  
7 probably not directly within the ambit of the hearing.

8 I mean our position simply would be that we  
9 believe to afford full relief for the benefit of the  
10 estate, these additional parties should be added because  
11 they are now in possession of monies that are derivative  
12 of rights that Comu had before the bankruptcy. Now, how  
13 you draw the line between concealment of assets and  
14 fraudulent transfer I think is an interesting question.

15 And we believe that assets were concealed  
16 by putting them in third parties names. And I mean  
17 we've gone into that in great detail in our complaint.  
18 The wife, The Barclay Group, and then trusts created  
19 that took over the rights of the Barclay Group, all  
20 those things.

21 THE COURT: All right. Well --

22 MR. LIPPE: We'll follow the procedures the  
23 Court instructs.

24 THE COURT: All right. Well, I thought we  
25 were going to be clear about that a few months ago. I'm

1 confused. Is there something you think your complaint  
2 adds that the trustee's complaint and intervention  
3 doesn't cover?

4 MR. LIPPE: Well, the revocation of  
5 discharge clearly.

6 THE COURT: Well, yes, okay.

7 MR. LIPPE: And --

8 THE COURT: That's perfectly fine for a  
9 creditor to go forward with that. But the trustee's  
10 complaint and intervention filed in September. It has  
11 added defendants Phyllis Comu, Bernard Brown, The  
12 Barclay Group, and Sunset Pacific. It asks for  
13 declaratory judgment, the Barclay and Sunset Pacific are  
14 alter egos of Comu. It asks for veil piercing, reverse  
15 corporate veil piercing as to Barclay Group, then Sunset  
16 Pacific. It asks for turn-over of property.

17 I guess I'm trying to figure out, what, are  
18 there additional entities you -- in your third amended  
19 complaint --

20 MR. LIPPE: The additional --

21 THE COURT: -- you have added some  
22 additional defendants that aren't in the trustee's.

23 MR. WANDER: Your Honor, this is David  
24 Wander. May I address the Court's comments?

25 THE COURT: You may.



1 MR. WANDER: What I would suggest is for  
2 purposes of our third amended complaint, we would have  
3 in our caption the defendant would just be the debtor  
4 Mr. Comu on the 727 actions. Then have the trustee  
5 beneath that, as the intervenor coplaintiff and  
6 third-party plaintiff. And the trustee's asserted the  
7 claims against Phyllis Comu, Bernard Brown and two  
8 corporate entities.

9 We will simply speak with the trustee as to  
10 whether he -- whether she would amend the complaint to  
11 include the additional entities that we had listed. But  
12 for purposes of our 727 action, we will just list the  
13 debtor as the defendant.

14 THE COURT: All right. Let me ask  
15 Mr. Elmquist, I mean you say you're just basically here  
16 to observe and not take a position, but I --

17 MR. ELMQUIST: Given the issues Your  
18 Honor's raised, I think I need to clarify a point or  
19 two, Your Honor. I frankly was a bit confused in terms  
20 of second versus third amended complaint as it relates  
21 to the motion to dismiss. I do think that it is still  
22 -- there is issue jointed with respect to whether the  
23 727 revocation should be dismissed under 12(b)(6). I  
24 think Mr. Olson is arguing that.

25 MR. OLSON: Certainly, because there's been

1 no compliance with the handful of orders previously  
2 entered by this Court in this adversary.

3 MR. ELMQUIST: So the -- well, the 727 as I  
4 understood it, what was still a live issue was the  
5 dismissal of the revocation count of the second amended  
6 complaint and the third amended complaint.

7 As it relates to the additional defendants  
8 that King Louie Mining would like to add with respect to  
9 their third amended complaint, these are parties that  
10 I'm familiar with. The trustee after doing the --  
11 through counsel doing extensive 2004 examinations  
12 determined the parties that we felt were appropriate to  
13 name as additional defendants. And at this juncture I  
14 don't believe the additional defendants that the King  
15 Louie Mining would like to add are appropriately added  
16 to the complaint simply because what we're talking about  
17 with respect to the Daptco Trust, the TKY Trust,  
18 Marathon Management and Regus Advisors, these are all  
19 entities in which Mr. Comu either has an interest or a  
20 family relation has an interest. They're obligations  
21 that relate to ultimately Mr. Comu's involvement with  
22 The Barclay Group, which is the centerpiece of really  
23 what Your Honor will eventually be hearing about as  
24 relates to the business activities Mr. Comu was engaged  
25 in. It all centers around The Barclay Group.

1                   So for instance, with respect to TKY Trust  
2 and the Daptco Trust, those -- they come into the  
3 picture because those trusts have promissory note  
4 obligations to The Barclay Group.

5                   If the Court ultimately determines that the  
6 piercing the corporate veil theory or relief that we can  
7 recover The Barclay Group assets, then one of those  
8 assets will be --

9                   THE COURT: -- notes receivable.

10                  MR. ELMQUIST: -- those notes receivable.  
11 And at that point we will pursue claims against Daptco  
12 and TKY. But at this juncture since the Court has made  
13 no determination that the Barclay Group is the alter ego  
14 of Mr. Comu, we did not think it appropriate to name TKY  
15 Trust or Daptco Trust as defendants. In fact, I think  
16 they would be subject to 12(b)(6) motion because there's  
17 no basis for the trustee to seek relief directly against  
18 those entities at this juncture.

19                  So that was the reason we didn't include  
20 them. As far as Regus Advisors and Marathon Management  
21 are concerned, those are entities that Mr. Comu has done  
22 business under since the filing of the bankruptcy case  
23 and I did not, from the examination, find any basis for  
24 seeking relief from those entities as a basis for any  
25 kind of recovery. Again, I think the crux of the basis

1 for recovery is The Barclay Group is the alter ego and  
2 Sunset Pacific and not these entities under which  
3 Mr. Comu has done business since the filing.

4 I mean those are issues I guess Your Honor  
5 can take up in connection with the request to leave to  
6 file the third amended complaint as whether or not the  
7 claims asserted are appropriately asserted at this  
8 juncture by King Louie Mining. But based upon my  
9 analysis, I don't believe those claims against those  
10 third parties are claims that either -- for which either  
11 King Louie has standing or present a viable claim at  
12 this juncture.

13 THE COURT: Okay.

14 MR. ELMQUIST: Having said all that, I do  
15 think that the Court can proceed this morning and I  
16 thought what was going to be heard this morning would be  
17 the issue of whether or not the 727 count should be  
18 dismissed under 12(b)(6).

19 THE COURT: Okay. Well, Mr. Olson, let me  
20 hear your argument on your motion to dismiss. And  
21 again, I view it as Mr. Elmquist has just articulated,  
22 it pertains to the 727 action.

23 MR. OLSON: I think that's where we're at.  
24 And I have answered the complaint and intervention. But  
25 we're dealing with a situation here where the plaintiffs

1 had a fraud judgment prepetition and have been actively  
2 participating at the meeting of creditors and in  
3 discovery by the trustee, and they did not file an  
4 objection to discharge or an exception to discharge.  
5 And after the discharge was entered when they come back  
6 under 727(d) there's a heightened requirement there.  
7 They've got to plead and show what in the world is it  
8 that they now know that they didn't know when the  
9 discharge was entered. And we filed a 12(b)(6) in  
10 response to that. And they exercised their one time  
11 right to amend and mooted that motion.

12 So I filed a second motion to dismiss. And  
13 a year and a half ago this Court ordered -- and I have  
14 got copies if you'd like for me to hand them up to you.

15 THE COURT: You may.

16 MR. OLSON: The brief and the argument that  
17 we had at the hearing on the second motion to dismiss  
18 was plaintiffs have failed to state a cognizable claim  
19 against the defendant for fraud under 727(d) and the  
20 fraud was not pled in accordance with (9)(b). After  
21 hearing that argument, the Court entered that February  
22 order and said "we're going to give you one last chance  
23 to plead and you have to specify the subsections of 727  
24 relied on. You have to show when and how you learned  
25 your facts. And if you're claiming fraudulent

1 transfers, you must in each instance state when the  
2 transfer was made and explain your standing to prosecute  
3 the fraudulent transfer claim."

4           The amended pleading was filed which  
5 prompted my third motion to dismiss, which is what's set  
6 for today, where my position basically is they didn't  
7 comply with any of the requirements in that February  
8 order, nor did they comply with the requirements in the  
9 March order. If they were going to try to pursue  
10 fraudulent transfers, that's what they had to do.

11           So today we're sitting here with the third  
12 motion to dismiss, their second amended complaint, and  
13 we have had a whole blizzard of pleadings and motions  
14 for leave, all of which are in violation of the agreed  
15 scheduling order. When we reached the point that the  
16 trustee was going to intervene and he had filed his  
17 complaint, the three lawyers submitted to this Court an  
18 agreed scheduling order, which I have handed up to you.

19           And it does not contemplate amended  
20 pleadings, period. It doesn't contemplate adding  
21 parties, period. We were going to litigate what was on  
22 file at that time. There's got to be structure. The  
23 trustee has given you a rational explanation of what he  
24 wants to pursue. He's looked at everything that King  
25 Louie and their lawyers have dragged in and said this is

1 what I want to pursue. Enough is enough.

2 THE COURT: Thank you.

3 All right. Mr. Lippe, your response.

4 MR. LIPPE: First of all, I'm going to  
5 simply observe that the specifics now argued orally by  
6 counsel are not contained within his motions. This is  
7 indicative of the way the arguments have proceeded on  
8 the motions to dismiss.

9 With respect to our second amended  
10 complaint, it is certainly true that the Court did  
11 instruct us to amend and say why is it that we didn't  
12 know. I'm paraphrasing. But basically why didn't you  
13 know before the discharge.

14 Looking at our second amended complaint,  
15 after we have alleged that there were sham transfers  
16 such as the transfer of -- such as the control of the  
17 Barclay Group in Paragraph 24 -- and I'm referring to  
18 our second amended complaint -- and the sham transfer to  
19 Comu's wife in Paragraph 25, we allege specifically in  
20 Paragraph 28, "plaintiffs were not aware of these  
21 fraudulent transfers, hidden assets and employment  
22 positions of Comu prior to the discharge herein as set  
23 forth below in greater detail. Instead, plaintiffs  
24 first learned of information concerning such concealed  
25 assets and fraudulent transfers beginning around

1 June 2010. From informants who had dealt personally  
2 with Comu. Upon information and belief these fraudulent  
3 transfers occurred within one year of the bankruptcy  
4 filing but were backdated in order to shield the assets  
5 from bankruptcy. Such assets and fraudulent transfers  
6 were material and materially impacted the true net worth  
7 of the debtor and were fraudulently concealed in  
8 violation of law."

9 Paragraph 29, "plaintiffs have been  
10 hindered in obtaining full disclosure of all facts" --  
11 skipping -- "by Comu's repeated refusal to produce  
12 discovery prior to the filing of the petition and his  
13 willful concealment of assets and misrepresentation of  
14 ownership on the schedules."

15 The detail is then set forth in Paragraph  
16 31 where we have listed a number of very specific items  
17 which were not fully and effectively disclosed in the  
18 schedule. That paragraph goes on for a page and a half.  
19 It talks about loans. It talks about the Green  
20 Automotive stock and a number of other information --  
21 items of information, which we learned from informants.

22 These were insiders that had worked with  
23 Mr. Comu whom he had stabbed in the back. But he had  
24 not stabbed them fatally and so they were able -- I mean  
25 figuratively, of course -- and they were able to talk



1 and complain about seeing that he was living the high  
2 life. And we have filed our disclosures -- we have  
3 served our disclosures as required by the scheduling  
4 orders and we have named these informants. So the  
5 detail is fleshed out even more fully in our third  
6 amended complaint which is based upon information that I  
7 did not have at the time of filing the second amended  
8 complaint, but which adds the specifics that were  
9 learned through the 2004 examinations conducted by  
10 Mr. Elmquist.

11 For example, we allege that these rights  
12 were created prior to the filing of bankruptcy in our  
13 second amended complaint. The details of that are set  
14 forth very explicitly in the third. There was a  
15 November 4th, 2009 meeting prior to the December 31,  
16 2009 meeting at which various rights were created,  
17 various rights that specifically dealt with The Barclay  
18 Group's control of Green Automotive, its rights to  
19 receive stock in Green Automotive, which is discussed at  
20 great length in the trustee's complaint and in our  
21 amended complaint, but basically millions of dollars  
22 have gone through Comu's hands through entities that he  
23 controls as a result of that November 4th, 2009  
24 transaction.

25 We only had the outlines of it in our

1 pleading, but I believe this is clearly a noticed  
2 pleading that sets out how we obtained the information  
3 through informants and when we obtained it after the  
4 discharge and going on for several months thereafter and  
5 I believe we have adequately met the instructions of the  
6 Court with our second amended complaint.

7 I would simply observe that with respect to  
8 Mr. Elmquist's statements about the two trusts, that's  
9 probably the only thing we disagree with what he said or  
10 what he's filed or failed to file so far, otherwise we  
11 fully agree with all of the points that he's making.

12 These were entities that on January 10th,  
13 10 days after the filing of bankruptcy and five days  
14 before the filing of the schedules. January 10th these  
15 two entities, one of which is a trust created for Comu's  
16 brother -- for Comu by his brother and one of them --  
17 one is for his mother. These entities supposedly  
18 purchased stock from The Barclay Group and gave notes.  
19 The notes were due just a few months later. But they  
20 didn't start making payments on the notes until they  
21 started -- until Mr. Comu started directing the sales of  
22 Green Automotive stock. And the total sales we've  
23 alleged in our third amended complaint -- the total  
24 sales grossed over \$3 million but only about \$600,000  
25 ultimately made its way into The Barclay Group because

1 of so-called commissions that they claim they had to pay  
2 on these strange sales, commissions that would be far in  
3 excess of what is legal and proper.

4                   And so the promissory notes executed by  
5 these trusts that Mr. Comu created right after he filed  
6 for bankruptcy were a sham designed to put stock in the  
7 hands of another couple of entities that he controlled  
8 and the value is not in the promissory notes. The value  
9 is in the Green Automotive stock that those entities  
10 acquired which really belong to The Barclay Group and  
11 which Comu controlled through The Barclay Group as of  
12 November 2009.

13                   So we believe that for the Court to enter a  
14 fully effective and valid judgment with respect to The  
15 Barclay Group and the Green Automotive stock that it  
16 controlled prior to the filing of bankruptcy and the  
17 rights that it had acquired prior to filing bankruptcy  
18 that those entities should be part -- should be brought  
19 before the Court.

20                   Now, procedurally whether the trustee  
21 brings them in, whether we bring them in with leave of  
22 Court -- subject to leave of Court, that will be for the  
23 Court to say. But that's our argument as to why we  
24 believe they should be part of this proceeding.

25                   I believe we have set forth the detail as

1 to why we didn't know about these transfers before the  
2 discharge and how we have learned of them, and, I  
3 believe, was set forth in detail in the second amended  
4 complaint, some of them, and then our third amended  
5 complaint when and if we're granted leave to file it  
6 adds to that detail.

7 THE COURT: All right.

8 Mr. Olson.

9 MR. WANDER: Your Honor, this is David  
10 Wander. Can I address some points?

11 THE COURT: Okay. Briefly.

12 MR. WANDER: Yes. Your Honor, the true  
13 nature of the debtor's fraudulent conduct did not become  
14 apparent until well over two, two and a half years after  
15 the bankruptcy filing. Most of the details came out  
16 through the trustee's discovery, which we participated  
17 in.

18 It took the trustee over two and a half  
19 years to get the facts that form the basis of the  
20 complaint relating to the fraudulent transfers. The  
21 true nature didn't really come to light until the stock  
22 of Green Automotive started to be sold for millions  
23 dollars apparently by The Barclay Group and by the  
24 trust. These sales did not occur until I believe the  
25 first one was June 23rd, 2011, then January 10th, 2012.

1 Those sales by The Barclay Group. And then the sales by  
2 the trust occurred December 23rd, 2011 and June 16th,  
3 2012.

4 So the information basically underlying not  
5 only the trustee's fraud claims or declaratory judgment  
6 that the assets that Comu had not scheduled were really  
7 his assets as well as the facts underlying the  
8 revocation of discharge didn't come out until well over  
9 two years after the bankruptcy filing. And I note in  
10 the -- in Your Honor's decision in re: Cooper, the  
11 revocation for discharge was filed I believe  
12 approximately six years, six to seven years after the  
13 filing date.

14 Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 Mr. Olson, you get the last word.

17 MR. OLSON: Your Honor, at the time the  
18 agreed scheduling order in this case was entered into,  
19 the trustee's complaint was of record. If they wanted  
20 to add parties, if they wanted to amend pleadings, that  
21 was the time to say so and argue for it in the  
22 scheduling order. They did not do that.

23 Now, at the time that agreed scheduling  
24 order was entered into, they had already replied to my  
25 motion to dismiss the second amended complaint. They

1 asked for and I agreed to the right for them to  
2 supplement that. That's all they asked for.

3 Now, to come in this week and say, well, we  
4 want to further supplement. We want to sur-reply. We  
5 want to add an amended complaint. We want to do all  
6 these things, they're out of time.

7 THE COURT: Thank you. All right.

8 The Court first denies the debtor  
9 defendant's motion to dismiss the second amended  
10 complaint of King Louie Mining, which complaint was  
11 filed March 2nd, 2011. The Court believes that this  
12 second amended complaint pleads with specificity a  
13 plausible claim on its face, a plausible claim under  
14 Section 727(d) of the Bankruptcy Code for possible  
15 revocation of discharge.

16 And the Court also believes the particulars  
17 -- the plaintiffs did give the particulars that the  
18 Court required in this Court's February 24th, 2011  
19 order. Looking at that order, the Court directed the  
20 plaintiffs be given one more chance to amend their  
21 complaint and plead with sufficient specificity their  
22 allegations against the defendant. The plaintiffs next  
23 amended complaint must particularly identify the  
24 subsections of 727(d) the plaintiffs rely upon and state  
25 when and how plaintiffs learned of the facts which are

1 the basis for their complaint, et cetera.

2 The Court does believe that the -- again,  
3 the second amended complaint came back and did give the  
4 particulars, and under the case law construing Rule  
5 12(b)(6) there is stated a plausible claim.

6 So defendant's motion to dismiss is denied.

7 But additionally, the Court is going to go  
8 ahead and rule on the motion for leave to file third  
9 amended complaint even though it was not technically  
10 noticed and set today, and I'm going to deny that.

11 The Court does believe it made clear in  
12 this February 24th, 2011 order that it was giving the  
13 plaintiffs one more chance. That's exactly the words  
14 the Court used. So no more amendments by plaintiffs  
15 King Louie Mining. That means that what we have is as  
16 the controlling pleadings in this case the King Louie  
17 Mining second amended complaint filed on March 2nd,  
18 2011 -- that's docket entry number 20 -- and the  
19 trustee's complaint in intervention. Those are the  
20 governing pleadings now. You know, certainly this is  
21 without prejudice to the trustee under Rule 15 seeking  
22 leave to amend. But I'm not inviting that, encouraging  
23 that. I'm just saying he is not barred -- or she is not  
24 barred.

25 But I think -- I think we have very fulsome

1 complaints now and we need to stick to these deadlines  
2 in the scheduling order and move ahead. I should add  
3 that one additional reason I'm denying the motion for  
4 leave to file third amended complaint is not just the  
5 fact that I said one more chance in the February 24th,  
6 2011 order, but I think it would be an exercise in  
7 futility. It is the trustee who has standing to pursue  
8 assets of third parties and to bring the alter ego  
9 remedy request and the reverse corporate veil piercing  
10 request.

11 So, again, the trustee is the lead party on  
12 that. So we have our governing pleadings now. We have  
13 a ruling on the motion for leave to file third amended  
14 complaint.

15 Any other housekeeping matters that the  
16 parties want to raise at this juncture? I think we're  
17 clear now, right?

18 MR. OLSON: I hope, Your Honor. Let me  
19 approach.

20 THE COURT: Okay.

21 MR. OLSON: The second amended complaint  
22 alleges 727(d) --

23 THE COURT: Right.

24 MR. OLSON: -- which survives under the  
25 Court's ruling.



1 THE COURT: Right.

2 MR. OLSON: It also complains about certain  
3 transfers without having standing to pursue those. May  
4 I safely ignore those and focus on the 727(d)  
5 allegations in that complaint --

6 THE COURT: Well --

7 MR. OLSON: -- and focus on the transfers  
8 complained of by the trustee?

9 THE COURT: -- all of the factual  
10 allegations are still ripe for litigation. I mean  
11 transfers may be a ground for 727 revocation of  
12 discharge. But as far as avoiding them, seeking to  
13 bring them into the estate, that's the trustee's --

14 MR. OLSON: Limited to those that the  
15 trustee wants to set aside?

16 THE COURT: Correct.

17 MR. OLSON: All right. That just --

18 THE COURT: All right. So I'm going need  
19 two forms of order.

20 Could you, Mr. Lippe, upload those forms of  
21 order for me?

22 MR. LIPPE: Yes, Your Honor.

23 THE COURT: Okay. Anything else? All  
24 right. That concludes this matter.

25 (Adjourned.)

CERTIFICATE

COUNTY OF LUBBOCK )  
STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 17th day of  
October, 2014.

/s/ \_\_\_\_\_  
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IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs

AND

DIANE G. REED, TRUSTEE

Intervenor-Plaintiff

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant.

BANKRUPTCY PETITION NUMBER: 10-3269

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HEARING ON MOTIONS

AUGUST 15, 2013

2:37 P.M. TO 3:15 P.M.

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

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1                   \* \* \* P R O C E E D I N G S \* \* \*

2                   THE COURT: We'll do King Louie Mining  
3 first versus Comu, Adversary 10-3269.

4                   Let's go ahead and get formal appearances  
5 on the record from every lawyer here on this matter.

6                   MR. LIPPE: Emil Lippe, Your Honor, on  
7 behalf of the movants and proposed intervenors.

8                   THE COURT: Okay.

9                   MS. HANKS: Kendyl Hanks from Greensburg  
10 Traurig on behalf of the plaintiffs and in opposition to  
11 the motion to intervene.

12                  THE COURT: All right. Thank you.

13                  MR. FLOYD: Charles P. Floyd, Your Honor,  
14 on behalf of plaintiffs, and in opposition to the  
15 motion.

16                  THE COURT: Thank you.

17                  MR. ELMQUIST: Good afternoon, Your Honor,  
18 David Elmquist on behalf of Diane Reed, intervenor.

19                  THE COURT: Okay.

20                  MR. ELMQUIST: And Your Honor, just so you  
21 know, the trustee is unopposed to the motion.

22                  THE COURT: Okay.

23                  MR. NICOUD: Robert Nicoud for C.J. Comu.  
24 We likewise are unopposed to the motion.

25                  THE COURT: All right.

1                   Well, Mr. Lippe, you get to go first. I  
2 guess the first thing I hope you will address is make  
3 sure I've got the context correct. We have a three-year  
4 old adversary proceeding at this point. We have  
5 basically arguments for revocation of the debtor's  
6 discharge under 727(d). We have fraudulent transfer  
7 allegations, request for declaratory judgment that this  
8 Court declare certain property property of the  
9 bankruptcy estate, alter ego, corporate veil piercing.  
10 I guess it was originally three judgment creditors of  
11 the debtor as plaintiffs, but then Ms. Reed intervened  
12 because of standing issues. So we now have  
13 co-plaintiffs.

14                   It's been pending about three years, so I  
15 think that is the context for this. And then you, of  
16 course, formally represented the non-trustee  
17 plaintiffs --

18                   MR. LIPPE: Correct.

19                   THE COURT: -- until recently. All right.  
20 So correct me if I've gotten anything wrong or left  
21 anything out. Now your argument.

22                   MR. LIPPE: Well, there's a huge amount of  
23 background as we have tried to summarize and capsulize  
24 in our motion. First of all I want to say we have  
25 absolutely no desire to interfere with the current

1 scheduling of the trial. We're requesting leave to  
2 intervene and then we will ask that our claims be  
3 bifurcated such that the regular schedule go forward.  
4 We have no intention of claiming the right to  
5 participate in the trial, the main trial, scheduled for  
6 next month or to take that dis -- any of that discovery  
7 -- pardon me -- but rather our claims go to the rights  
8 of recovery of our former clients and our interest to be  
9 paid out of their recovery.

10 And of course I mean I fully --

11 THE COURT: Okay. Let me back up. Any  
12 recovery -- unless there's a special agreement between  
13 the trustee and the judgment of creditor plaintiffs that  
14 I can't remember -- any recovery is going to come into  
15 the bankruptcy estate.

16 MR. LIPPE: I think it would have to, yes.

17 THE COURT: And then the judgment  
18 creditors, I think I read have about 90 plus percent of  
19 the claims, so any ultimate dividend to unsecured  
20 creditors they get the bulk of. You're talking about a  
21 right to get part of their ultimate recovery as  
22 unsecured creditors in the bankruptcy case?

23 MR. LIPPE: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. LIPPE: And our rights as we set forth



1 in our motion and in our proposed complaint are that we  
2 had an agreement with the plaintiffs that we would be  
3 paid first out of any proceeds that were collected.  
4 That is a policy that has been followed through in  
5 practice in the past on other claims where we have  
6 represented Katz and his related companies. And it is  
7 something that he had promised and assured us on  
8 numerous occasions would be followed in this case. We  
9 came to a parting of the ways very shortly -- just a  
10 couple months ago. It's been less than two months since  
11 we were replaced by the Greenberg Traurig firm. And we  
12 have done most of the work necessary to get the case  
13 ready for trial. And now disputes have arisen over  
14 payments of our fees and claims were filed in state  
15 court alleging malpractice which we believe were simply  
16 an attempt to avoid payment.

17 The claims that were filed were essentially  
18 simultaneously with our motion to intervene. I  
19 conferred with opposing counsel and they waited nearly  
20 an hour to respond, and in the interim they  
21 electronically filed their lawsuit in state court  
22 wanting to say, "ah-ha, we beat you, the state court has  
23 primacy."

24 The issues that we're talking about are  
25 issues that this Court decides just about every week, I

1 think, reasonableness and necessity of attorneys' fees,  
2 reasonable of actions taken. And --

3 THE COURT: Okay. What -- do I have a  
4 subject matter jurisdiction problem though right off the  
5 bat?

6 MR. LIPPE: I think there's --

7 THE COURT: Is there two nondebtor third  
8 parties -- and you were not retained as a professional  
9 of the bankruptcy estate, the trustee's counsel or any  
10 other party in interest counsel pursuant to a Bankruptcy  
11 Court order. So first off, where is my bankruptcy  
12 subject matter jurisdiction?

13 MR. LIPPE: Under diversity. There's  
14 complete diversity and it's in excess of \$75,000. All  
15 the defendants --

16 THE COURT: But that's the district court's  
17 jurisdiction.

18 MR. LIPPE: Yes.

19 THE COURT: I'm talking about bankruptcy  
20 subject matter jurisdiction.

21 MR. LIPPE: And bankruptcy it relates to  
22 these causes of action that the case that we've cited  
23 out of the Northern District focuses upon whether an  
24 attorney has some sort of right in the action that's  
25 being pursued on behalf of his or her client. And that

1 is what we are asserting. It's -- it would be the same  
2 if we collected money on behalf of our client and then  
3 we had the common law attorneys right to retain our fee  
4 out of what we've collected. And --

5 THE COURT: Okay. Well, let me back up on  
6 my bankruptcy subject matter jurisdiction question.  
7 Because that is the first thing that matters here.

8 Don't we strictly look at 28 USC Section  
9 1334, and I think you were using some of the buzz words  
10 under that statute related to the bankruptcy case. But  
11 the 5th Circuit says the standard we use in deciding if  
12 a dispute is related to is the outcome of the dispute  
13 could conceivably have an impact on the bankruptcy  
14 estate being administered. Okay. What is my impact  
15 here on the bankruptcy estate being administered, your  
16 claim for attorneys' fees against these nondebtor  
17 plaintiffs.

18 MR. LIPPE: It will require analysis of the  
19 bankruptcy laws concerning dischargeability. They have  
20 asserted claims that misstate federal bankruptcy law as  
21 grounds for alleged malpractice. They have alleged that  
22 this so-called malpractice --

23 THE COURT: Okay. Ms. Hanks is standing  
24 up.

25 MS. HANKS: Your Honor, I'm afraid we're

1 going to have to object. May we approach?

2 THE COURT: You may. Well, you want to  
3 have a bench conference?

4 MS. HANKS: Yes.

5 THE COURT: Okay. Go ahead and come  
6 forward.

7 (Off-the-record bench conference.)

8 THE COURT: Dawn, we'll go back on the  
9 record.

10 Let me tackle this a different way. Being  
11 careful, I guess, not to reveal any attorney/client  
12 privileges or to state anything that could be adverse to  
13 the plaintiffs' position in the underlying litigation,  
14 help me to understand the impact on the bankruptcy  
15 estate being administered if you either get a claim for  
16 attorneys' fees or not, if the plaintiffs ultimately  
17 prevail. I don't understand the effect on the estate.

18 MR. LIPPE: The --

19 THE COURT: Either they get -- either  
20 co-plaintiffs get 100 percent of the recovery they're  
21 entitled to as a creditor of the Comu estate or I guess  
22 they get 67 percent and you get 33 percent or whatever  
23 the contingency arrangement was. But either way, I  
24 don't understand the impact on the bankruptcy estate.

25 MR. LIPPE: Well, in addition to proving up

1 the primary claim against Comu, there would be an  
2 attempt to recover attorneys' fees, I presume. That  
3 would have been the next step that, assuming that I was  
4 still representing the plaintiffs and assuming that we  
5 prevailed at trial, we would then come to the Court and  
6 ask the Court to award attorneys' fees in its discretion  
7 and it would then be up to the Court to determine  
8 whether or not to do so, and if so, the reasonableness  
9 and necessity of the fees that were requested. The  
10 trustee is going to come and --

11 THE COURT: Okay. So you're saying that it  
12 would be a larger award against defendant Comu and the  
13 co-defendants potentially?

14 MR. LIPPE: Yes, against --

15 THE COURT: If you are allowed to --

16 MR. LIPPE: -- the defendants.

17 THE COURT: -- intervene. Okay. Assuming  
18 that's an impact on the estate, which I still don't see  
19 how it is, it's an impact on the defendants, a larger  
20 judgment maybe against them.

21 MR. LIPPE: And --

22 THE COURT: Humor me. What would your  
23 basis for attorneys' fees be?

24 MR. LIPPE: That --

25 THE COURT: I mean 727 and torts, right?

1 MR. LIPPE: Yes.

2 THE COURT: So what is the base for  
3 attorneys' fees?

4 MR. LIPPE: Well, the Texas Fraudulent  
5 Conveyance Statute allows for recovery of attorneys'  
6 fees.

7 THE COURT: Okay.

8 MR. LIPPE: And there is an opinion by  
9 Judge Houser which in a lengthy case just a couple years  
10 ago that I think awarded that in the Kornman and I  
11 forget the name of the company right now, the Kornman  
12 case. So we believe that that would be part of what's  
13 sought to be recovered. The amount --

14 THE COURT: Okay. So that's --

15 MR. LIPPE: -- of the trustee's --

16 THE COURT: -- in the Uniform Fraudulent  
17 Transfer Act, I just don't happen to remember that, is  
18 that where it is?

19 MR. LIPPE: Yes, the UFTA.

20 THE COURT: Well, again, then I guess I  
21 will go back to my other question: How does that impact  
22 the estate?

23 MR. LIPPE: And it also impacts the  
24 determination of the timing of various things that  
25 occurred in the litigation and who did them, whether it

1 was being done on behalf of the plaintiffs or the  
2 trustee. We were attempting for some time to assert  
3 claims on behalf of the estate in the trustee's absence  
4 or inaction and the trustee is now chosen to, you know,  
5 to join in and to intervene in those claims. I believe  
6 that those assisted the trustee in pursuing and  
7 advancing the trustee's interest. And that would be  
8 part of the Court's consideration in the overall  
9 administrative expenses of the estate.

10 THE COURT: He didn't employ you as special  
11 counsel though, correct?

12 MR. LIPPE: No.

13 THE COURT: And there's no substantial  
14 contribution tied to administrative expense claim in  
15 Chapter 7.

16 MR. LIPPE: There was an agreement at one  
17 time to retain us as special counsel. That never ended  
18 up being executed or presented to the Court. And work  
19 was done along those lines.

20 THE COURT: All right. I mean tell me why  
21 it doesn't make more sense. I mean I still am hung up  
22 on the subject matter jurisdiction, but assume I could  
23 get past that, tell me why it doesn't make more sense to  
24 simply let the state court litigation play out, you  
25 know, I know what you said about the timing. They say

1 malpractice, negligence, whatever claims they have  
2 against you. You're obviously able to counterclaim for  
3 your attorneys' fees, I mean why doesn't it make more  
4 sense to let that happen and then --

5 MR. LIPPE: Because at its very core, those  
6 claims focus upon what was or wasn't done and when it  
7 was or wasn't done in this case. Their claims are based  
8 almost entirely upon alleged breaches of duties in this  
9 very adversary proceeding, and frankly, I don't believe  
10 that there's any other court that can make as complete  
11 and accurate and full determination of that issue other  
12 than this Court, because the Court was aware from day  
13 one of what was or wasn't happening. The Court  
14 supervised -- that's not a good word -- the Court was  
15 there and acting as a court in connection with these  
16 things and you've seen or what was or wasn't presented.  
17 This Court knows the bankruptcy laws. There are federal  
18 laws, determinations of dischargeability, determinations  
19 of all these other alleged violations of the federal  
20 bankruptcy laws should reside with the Bankruptcy Court.  
21 And that's what the claims in the state court are  
22 basically focusing on.

23 THE COURT: So it's a judicial efficiency  
24 economy kind of argument?

25 MR. LIPPE: Yes. And in fact, we have



1 cited at length for one case that emphasized that  
2 congress gave exclusive jurisdiction to determine issues  
3 of dischargeability to the bankruptcy courts. So this  
4 isn't a predominantly state law claim that we're trying  
5 to bring in the bankruptcy court. It's a case involving  
6 work done in the bankruptcy court and whether or not  
7 that complied with issues of bankruptcy law. We will  
8 have our disputes later about which side is right. But  
9 I think this Court is the best capable to make that  
10 determination.

11 THE COURT: All right. Ms. Hanks, your  
12 argument now.

13 MS. HANKS: Thank you, Your Honor. The  
14 first thing we would like to do is clear up a couple of  
15 things. As an initial matter, the Court is absolutely  
16 right, there is a very clear jurisdictional problem  
17 here. This is a malpractice dispute between a nondebtor  
18 attorney and plaintiffs in this action that has no  
19 impact whatsoever on the estate. Either those  
20 claims are -- however those claims are resolved, there  
21 will or will not be recovery against one party or  
22 another either for fees or for breach of fiduciary duty  
23 and other claims. But that has nothing to do with the  
24 resolution of the bankruptcy -- of the estate in this  
25 case.

1                   Something that's key that we would like to  
2 clarify, the Court said something about the contingency  
3 agreement. There is no agreement here. There are  
4 accrued fees at an hourly basis. There's no written  
5 retainer agreement. He's seeking reimbursement for  
6 those claims.

7                   But there is no case out of the 5th Circuit  
8 that has ever permitted intervention based on an  
9 attorney's claim for accrued fees without some sort of  
10 either formal government -- formal legal lien or  
11 executed contingency agreement. And in fact, one of the  
12 cases that Mr. Lippe himself cited in his reply brief at  
13 Page 3 -- this is the Allen versus Fannie Mae case out  
14 of -- 2007 out of the Southern District of Texas by  
15 Judge Raney, specifically rejected the idea that they  
16 would extend permission to intervene in a bankruptcy by  
17 an attorney to something that wasn't strictly a  
18 contingency fee agreement that complied with prior  
19 precedent. And so one of the cases he cites in his own  
20 brief actually supports not permitting intervention here  
21 because that case tracks our situation which is no  
22 contingency agreement and no formal lien.

23                   And Your Honor, I actually have a copy of  
24 that case if --

25                   THE COURT: All right.

1 MS. HANKS: -- I may.

2 THE COURT: You may approach.

3 MR. LIPPE: Do you have a copy for us?

4 MS. HANKS: It's cited in your brief. I'm  
5 sorry. I only had two copies.

6 THE COURT: Alam versus Fannie Mae.

7 MR. LIPPE: We cited or the case is?

8 MS. HANKS: It is cited at Page 3 of your  
9 reply.

10 MR. LIPPE: Okay.

11 MS. HANKS: It's Alam A-L-A-M versus Fannie  
12 Mae.

13 The second issue that's important in a  
14 variety of the elements -- he sought intervention both  
15 as a right and as permissive intervention. And in a  
16 variety of these elements the Court asks the question of  
17 prejudice. Is he going to be prejudiced by not being  
18 permitted to intervene and are the existing parties  
19 going to be prejudiced if he does intervene?

20 Well, first of all, there's been no  
21 allegation whatsoever that if he does succeed in his  
22 claims for attorneys' fees that he claims are owed,  
23 which of course we challenge because we do believe there  
24 are a variety of breaches. But none of that needs to be  
25 resolved by this Court. If he does prevail, there's no

1 allegation whatsoever that this is not -- that our  
2 client is not a party he could not recover from.  
3 There's no allegation whatsoever that once those claims  
4 are resolved by the state court that he doesn't have the  
5 opportunity to somehow seek remedy. This isn't someone  
6 who's trying to escape jurisdiction. It's not a party  
7 who's not amenable to jurisdiction. There's been no  
8 allegation whatsoever about that. Now, so there's  
9 really no prejudice on his part.

10           The prejudice here is that -- is exactly  
11 what we're gravely concerned about, and in fact, we're  
12 going to ask the Court to strike from the record  
13 Mr. Lippe's reply because he is literally taking a  
14 position in defense of his own conduct as an attorney  
15 that materially conflicts with his own client's position  
16 in this bankruptcy adversary.

17           And so in order for him to intervene in  
18 this case and prevail on the claims that he's making  
19 right now, he essentially has to undermine the very case  
20 that his former client is prosecuting in the adversary.  
21 Not only is that not permissible and certainly there's  
22 no case law supporting intervention in that situation,  
23 it would be a blatant violation of the Texas Rules of  
24 Ethical -- of Professional Conduct.

25           Not only concerning conflict of interest

1 but specifically concerning failure to mitigate because  
2 there is even though there's a pending state court  
3 proceeding, he's now seeking to intervene here with  
4 claims that undermine the parties which only exacerbate  
5 those damages.

6                   Very briefly, just to make sure the Court  
7 is fully aware of the circumstances of this filing  
8 Mr. Lippe claims this argument, "ah-ha we beat you to  
9 the courthouse." First of all, it's not relevant to the  
10 Court's analysis here. The question is whether, A,  
11 there's an interest sufficient to get permission or  
12 intervention of right or if the Court has jurisdiction.  
13 But more importantly he hasn't filed a petition. He  
14 filed a motion to intervene. And we have four letters  
15 that we are more than happy to provide to the Court  
16 beginning on June 27th that on July 2nd, on July 9th and  
17 July 17th, trying very hard to get Mr. Lippe's response  
18 from malpractice counsel before we filed our petition.  
19 We waited approximately -- almost close to a month.

20                   MR. LIPPE: We're going to object to any  
21 such argument that's seeking to introduce evidence  
22 without foundation, evidence that's not supported by any  
23 of the pleadings or briefing and with no advance filing  
24 as required by the local rules.

25                   MS. HANKS: Your Honor, just to let you

1 know, in the reply brief that was just filed, the first  
2 two pages allege that this is counsel that we, counsel  
3 for Katz, took advantage of the requirement of a  
4 certificate of conference under the local rules to beat  
5 intervenors to the courthouse. We are responding to an  
6 argument he made in his reply and that he made before  
7 this Court in this hearing.

8 THE COURT: All right. Well, I sustain the  
9 objection. I don't need to see the letters. I don't  
10 feel like they're terribly relevant.

11 MS. HANKS: There are a variety of other  
12 reasons why intervention should be denied not the least  
13 of which the Alam case that we have cited to you. We  
14 also have and we've cited in our brief Texas  
15 Professional Ethics Committee opinion 610, which  
16 specifically says that there is no security interest or  
17 other proprietary interest in litigation for an  
18 attorney. They cannot take an interest in litigation  
19 the way he's claiming right now unless it is a  
20 contingency fee agreement which he has admitted this is  
21 not. He admitted in his briefing. Or it is a lien  
22 granted by law to secure the lawyers' fee or expenses.  
23 And that has not happened here.

24 And the cases that he's relied on -- there  
25 are four -- none of them apply to this situation.

1 Gaines versus Dixie Carriers, 5th Circuit, 1970, first  
2 of all, there's been a lot of case law since then that  
3 actually called the Gaines analysis into question. But  
4 in any event Gaines was a contractual interest based on  
5 a spined contingency fee agreement that depended on the  
6 outcome of the actual adversary proceeding.

7                   Gilbert versus Johnson, 5th Circuit, 1979.  
8 Under Georgia law the attorney actually had a lien on  
9 the client's cause of action for services rendered.  
10 There is no lien here. And Sierra Club versus Espe, the  
11 quote, unquote interest in that case was actually  
12 property interest in existing timber contracts that had  
13 nothing to do with the case here.

14                   And finally, the case that Mr. Lippe  
15 referred to earlier out of the Northern District of  
16 Texas, which -- out of Dallas which is the Bibles the  
17 versus City of Irving. That was a signed retainer  
18 agreement also providing for a contingency fee agreement  
19 in the underlying litigation.

20                   Two really important distinguishing facts  
21 here: No signed contract, no contingency agreement, no  
22 lien. Undisputed facts. This is just a claim for  
23 accrued hourly billables. The second undisputed fact:  
24 The attorneys' fees that he's seeking and his proposed  
25 complaint, he claims that this all related to this

1 adversary. Starting on Page 3 of his proposed  
2 complaints and intervention, in Paragraph 9, Mr. Lippe  
3 lists five or six different proceedings. These are  
4 proceedings that have been in New York state court,  
5 Texas state court. There was one in arbitration that's  
6 currently on appeal in the Dallas Court of Appeals.  
7 He's seeking attorneys' fees related to all of these  
8 representations, and yet, he's trying to convince the  
9 Court that all of these are necessary -- should be  
10 decided here even though they have nothing to do with  
11 the bankruptcy except to the extent they regard  
12 attorneys' fees concerning this adversary. And all of  
13 that can easily be resolved by the state court where the  
14 petition is already pending and where an answer will be  
15 filed or is due to be filed within the next couple of  
16 weeks.

17 Unless the Court has any other questions.

18 THE COURT: I don't. Thank you.

19 MS. HANKS: Thank you, Your Honor.

20 THE COURT: All right. Mr. Elmquist, I'm  
21 curious to hear from you. What is the reason you have  
22 chosen the position you have taken here?

23 MR. ELMQUIST: Your Honor, I have --  
24 frankly, I have stated that the trustee was unopposed to  
25 the motion for the simple reason that Mr. Lippe's claim



1 with respect to his attorneys' fees, according to  
2 Mr. Lippe, was not going to affect the presentation of  
3 the trial here. Having heard the argument today, I have  
4 to say I don't see a basis for the intervention from the  
5 standpoint of subject matter jurisdiction. I don't see  
6 a connection to the estate. As the Court noted whatever  
7 recovery might come from the claim he asserts is not  
8 going to have any effect on what ultimately the trustee  
9 distributes to the claimant, which is King Louie. So in  
10 other words, as the Court noted, how those dollars get  
11 parsed between the plaintiff claimant creditor and  
12 Mr. Lippe as counsel has no impact upon the distribution  
13 to creditors in this case. So on that basis I don't see  
14 any reason for the intervention.

15 THE COURT: All right. The Court is going  
16 to deny the motion to intervene. Rule 24 of the Federal  
17 Rules of Civil Procedure is the rule that has been  
18 invoked here. It's applicable in this bankruptcy  
19 adversary proceeding because of Bankruptcy Rule of  
20 Procedure 7024 which incorporates it.

21 Subsection (a) of Rule 24, of course, deals  
22 with when a party might have a right to intervene and  
23 then subsection (b) deals with permissive intervention.  
24 The Court has determined that neither one of these  
25 subdivisions support intervention here.

1                   To be clear, this is a very unusual context  
2 for seeking intervention. In any event, I don't think  
3 movant has shown that he has an interest here in the  
4 subject matter of the adversary proceeding that is  
5 sufficient to trigger Rule 24(a) and give him a right to  
6 intervene.

7                   Moreover, the Court believes that  
8 intervention whether permissive or argued as a matter of  
9 right would be an inappropriate circumvention of a very  
10 real problem of lack of bankruptcy subject matter  
11 jurisdiction.

12                  As I alluded to, we have essentially two  
13 nondebtor third parties with disputes against one  
14 another, Mr. Lippe asserting that the nondebtor third  
15 parties owe him attorneys' fees, and the co-plaintiffs  
16 arguing malpractice and other torts. These are clearly  
17 state law issues and applying 28 USC 1334(b), which is  
18 the statute governing bankruptcy subject matter  
19 jurisdiction, the Court cannot get to any plausible  
20 argument that there is an impact on the bankruptcy  
21 estate being administered.

22                  Again, as I alluded to, the Court is going  
23 to rule however it rules in the underlying adversary  
24 which is a 727, objection to discharge, fraudulent  
25 transfers, its veil piercing theories, request for

1 declaratory judgment that certain property is property  
2 of the bankruptcy estate. The Court is going to rule  
3 however its going to rule. If I rule in favor of the  
4 plaintiffs, there is going to be a pot of money come  
5 into the bankruptcy estate, the bankruptcy trustee will  
6 administer it and the co-plaintiffs, the respondents  
7 here today, are either going to get 100 percent of the  
8 dividend that the Bankruptcy Code entitles them to or  
9 they're going to have to share some of that dividend, I  
10 guess, with Mr. Lippe.

11 But again, this doesn't impact the  
12 bankruptcy estate so the Court believes, regardless of  
13 whatever judicial efficiency might be argued, the  
14 correct thing to do from a jurisdiction standpoint is to  
15 allow the state court to decide those issues. And  
16 again, I don't know why Rule 24 is being properly  
17 invoked here, so the motion to intervene is denied.

18 All right. Ms. Hanks, can you upload a  
19 simple form of order denying the motion? And you don't  
20 have to reference all of the different reasoning I gave.

21 MS. HANKS: Your Honor, we actually brought  
22 one if you would like a physical copy or we would be  
23 glad to upload it.

24 THE COURT: If you would just upload it,  
25 please.

1 MS. HANKS: Sure.

2 THE COURT: All right, thank you.

3 MS. HANKS: Your Honor, we also, very  
4 briefly, counsel for the trustee contacted us a couple  
5 days ago because the -- this is unrelated to the motion.  
6 It's regarding the scheduling order.

7 The depositions for the defendant and --  
8 well, two of the defendants have been pushed back  
9 because electronic discovery is still being conducted.  
10 We've got how much --

11 UNIDENTIFIED SPEAKER: Approximately 80  
12 gigabytes.

13 MS. HANKS: That we have just gotten and  
14 have not even had a chance to look at yet. And we're  
15 still trying to do the depositions in September. We  
16 have conferred with counsel -- Elmquist contacted us.  
17 We conferred with Olson as well. And we would like to  
18 discuss moving some of the deadlines back because the  
19 depositions and the discovery is pushing up so close to  
20 the Court's deadlines for pretrial briefing.

21 THE COURT: All right. Mr. Elmquist, my  
22 staff told me that I guess someone had visited with Dawn  
23 about a November trial.

24 MR. ELMQUIST: Yeah, my paralegal had  
25 contacted your staff about the possibilities -- the

1 issue is this, Your Honor, the King Louie plaintiffs  
2 believe that their portion of the trial that relates to  
3 727 actual take close to a week. My portion of the case  
4 that really focuses on the alter ego claims will take a  
5 few hours to present. So all told it's looking like a  
6 week trial. And from the standpoint of the Court's  
7 normal trial scheduling, wondering about whether we can  
8 get a week-long trial on the Court's November trial  
9 calendar or December trial calendar. October I think is  
10 questionable in light of the fact that we have still  
11 discovery to complete. So my main purpose was to simply  
12 inform the Court that we're going to have to present the  
13 modified scheduling order and other presumably agreed  
14 amended scheduling order but also to talk to the Court  
15 about how we should go about trying to get a week of  
16 this Court's time for trial.

17 THE COURT: All right. Well, if everyone  
18 is amenable, I agree to continue the trial docket call  
19 from September to November. And Dawn, I think you  
20 looked and found there were a few consecutive days in  
21 November.

22 (Inaudible).

23 THE COURT: Okay. So that is the week of  
24 what?

25 MR. ELMQUIST: It's the week of the 18th of

1 November, Your Honor.

2 (Inaudible).

3 MR. ELMQUIST: Yes.

4 THE COURT: Okay.

5 MR. ELMQUIST: So that would be --

6 THE COURT: I don't have a November

7 calendar here but --

8 MR. ELMQUIST: So I guess Thanksgiving  
9 would be like on the 29th, thereabouts.

10 UNIDENTIFIED SPEAKER: 30th.

11 MR. ELMQUIST: 30th.

12 THE COURT: Thanksgiving is the 30th. All  
13 right. So November 18th, is that --

14 MR. ELMQUIST: That Monday.

15 THE COURT: All right. Well, we can go  
16 ahead and reserve those dates.

17 UNIDENTIFIED SPEAKER: Deadlines.

18 MR. ELMQUIST: We'll push --

19 THE COURT: Roll everything off of that and  
20 we can have a trial docket call -- what would that be --  
21 November 4th because we've got a federal holiday, I  
22 guess on the 7th. So we could have a trial docket call  
23 November 4th and address any pre-trial, you know,  
24 housekeeping matters and confirm that y'all are ready  
25 for trial, but we will go ahead and block off, I guess

1 November 18th -- the week of November 18th. And so  
2 hopefully you can get it all done in five days. If not  
3 we'll --

4 MR. ELMQUIST: Yeah, absolutely. And if we  
5 find that we can do better once we stipulate, we will  
6 advise the Court.

7 THE COURT: Okay.

8 MR. ELMQUIST: And I guess we're also  
9 trying to mediate this.

10 MS. HANKS: Yes. We will know a lot more  
11 about how long we think the trial is going to take after  
12 the depositions.

13 THE COURT: Okay.

14 MS. HANKS: Because we're just now getting  
15 the electronic documents. And what we have agreed to do  
16 is try to find a date the week of that September trial  
17 setting to mediate.

18 THE COURT: Okay. All right.

19 MS. HANKS: And we will keep the Court  
20 informed.

21 THE COURT: All right. Well, we will go  
22 ahead and if you will upload an order continuing or an  
23 amended scheduling order and go ahead and insert those  
24 November trial dates, we will go ahead and block those  
25 off.

1 MR. ELMQUIST: Thank you, Your Honor. We  
2 will do so.

3 THE COURT: Okay. Thank you.

4 Stand adjourned.

5 (Adjourned.)

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CERTIFICATE

COUNTY OF LUBBOCK )

STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 17th day of  
October, 2014.

/s/ \_\_\_\_\_  
LINDA YORK, CSR No. 4899  
Expiration Date: 12/31/15  
Cathy Sosebee & Associates  
Firm Registration No. 49  
P.O. Box 86  
Lubbock, TX 79408  
806.763.0036

IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs,

V.

CENGIZ J. COMU a/k/a CJ COMU,

Defendant.

DIANE G. REED, TRUSTEE.

Intervenor, Co-Plaintiff, and Third-Party  
Plaintiff,

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant,

and

PHYLLIS E. COMU, BERNARD D. BROWN, THE BARCLAY GROUP,  
INC., AND SUNSET PACIFIC, L.P.,

Third-Party Defendants.

BANKRUPTCY PETITION NUMBER: 10-03269-sgj

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TRIAL DOCKET CALL HEARING

MARCH 4, 2014

2:33 P.M. TO 2:47 P.M.

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

1

2 Transcript produced from audio recording by:  
3 LINDA YORK, RPR, CSR  
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1                   \* \* \* P R O C E E D I N G S \* \* \*

2                   THE COURT: Counsel, let's come forward to  
3 the podium and make appearances, please. This is King  
4 Louie Mining versus Comu, et al, Adversary 10-3269.

5                   MS. HANKS: Kendyl Hanks, Greenburg Traurig  
6 for the plaintiffs and my co-counsel Victor Vital and  
7 Nick Sarokhanian.

8                   THE COURT: Okay.

9                   MR. ELMQUIST: Good afternoon, Your Honor,  
10 David Elmquist on behalf of Diane Reed, trustee,  
11 intervenor and third-party plaintiff.

12                  THE COURT: All right.

13                  MR. OLSON: Your Honor, Dennis Olson for  
14 the defendants.

15                  THE COURT: All right. I heard y'all went  
16 to the wrong courtroom, some of you.

17                  MR. OLSON: Not me.

18                  THE COURT: Not you? Okay. All right.  
19 Well, I don't think Judge Hale wanted to have a five-day  
20 trial. Just kidding.

21                  MS. HANKS: We're hoping it won't take that  
22 long, Your Honor.

23                  THE COURT: All right. Well, let's talk  
24 about where things stand. This is of course just trial  
25 docket call today.

1 I noticed that someone has been busy  
2 between the time I checked this morning and checked this  
3 afternoon, I saw a joint pretrial order, which I was  
4 very pleased to see that all counsel had participated  
5 and signed off on. It looks like it is complete except  
6 you all may still be working on stipulated facts and  
7 have a game plan to get those submitted on or before  
8 March 14th; is that true?

9 MS. HANKS: Yes, Your Honor, we've already  
10 scheduled a meeting for Tuesday. We're going to sit  
11 down and nail down stipulated facts for the joint  
12 pretrial order. And I think there will be quite a few.

13 THE COURT: Okay. All right. Well, that  
14 would be obviously very, very helpful. I don't know if  
15 that will cause the five-day trial estimate to go down,  
16 but I heard you say you hope it won't be five days but  
17 that's everyone's safest guess right now?

18 MS. HANKS: That is from our perspective,  
19 yes, Your Honor.

20 THE COURT: Okay.

21 MR. ELMQUIST: Your Honor, I don't think  
22 it's going to take five days and I'm hoping that we can  
23 streamline the case with a good bit of stipulated facts.

24 THE COURT: I mean I'm hoping there  
25 certainly wouldn't be duplication between the trustee's

1 case and --

2 MR. ELMQUIST: By no means, Your Honor.

3 THE COURT: -- the creditors case.

4 MR. ELMQUIST: Counsel for the plaintiffs  
5 and I were already -- scoped that out and sort of have a  
6 game plan for what will be presented by the trustee and  
7 what will be presented by the King Louie plaintiffs. So  
8 I think in that respect there will be no duplication.  
9 You know, we will just see how far we can get with the  
10 stipulations to try to streamline the case. We  
11 certainly intend to, as much as possible, to stipulate  
12 to the admissibility of exhibits. And I think it's  
13 likely that the witness and exhibit list of the  
14 plaintiffs which right now has 800 some exhibits is  
15 going to be reduced.

16 MS. HANKS: That's not likely, Your Honor,  
17 it is absolutely -- it is going to be much reduced. We  
18 are in that process.

19 THE COURT: Okay. Very good. Well, on  
20 that topic of evidence, looks like all of you filed  
21 witness and exhibit lists back on February 24th. There  
22 are no objections that I see on file to any particular  
23 exhibit named, so under the terms of our scheduling  
24 order, all objections to anyone's exhibits would be  
25 deemed waived except as to relevance. All right? So

1 any misunderstanding about that? That doesn't  
2 necessarily mean, you know, you will stipulate to  
3 everyone's evidence, but all objections except as to  
4 relevance would be deemed waived at this point under the  
5 terms of the scheduling order.

6 MR. ELMQUIST: Understood, Your Honor.

7 MR. VITAL: That's fine with us, Your  
8 Honor.

9 THE COURT: Okay. All right. Very good.

10 All right. Well, again, I have looked  
11 through the pretrial order and I appreciate the work  
12 that has gone into that. It certainly helps the Court  
13 get a handle on what is going to potentially be covered  
14 at trial. So what I would ask is if you all will upload  
15 into orders processing once you have the stipulated  
16 facts worked out, the pretrial order, and I will get it  
17 signed before trial so you will know on trial date  
18 that's the governing order for trial.

19 So can we get that -- let's see -- the 14th  
20 is Friday. And I'm about to tell you we're going to be  
21 set for trial on Monday. So can you by 5:00 on Friday  
22 get the pretrial order submitted so I can sign it?

23 MR. ELMQUIST: Absolutely, Your Honor.

24 THE COURT: And look at it over the  
25 weekend.



1 MS. HANKS: Yes, Your Honor.

2 THE COURT: All right. Which brings me to  
3 the next point, trial the week of March 17th. I think  
4 through conversations with my courtroom deputy, you all  
5 knew that we had reserved those days. So at this point  
6 I'm ready to just go ahead and officially enter an order  
7 setting trial for Monday, March 17th at 9:30 in the  
8 morning. We would go all day every day and hopefully  
9 finish by the end of the day Friday, March 21st, if not  
10 sooner.

11 The one issue I have is on Thursday the  
12 20th at 1:30, I do have a motion to lift stay docket  
13 that would maybe take 30 minutes. So we'll just  
14 schedule a late lunch that day so we don't lose any  
15 time.

16 So the Court will go ahead and issue the  
17 order setting the trial for March 17th. I will be  
18 looking for the final pretrial order. It will be  
19 exactly what I have here that you filed today, only with  
20 stipulated facts added. And I will sign that as soon as  
21 you get it submitted on Friday the 14th.

22 MR. ELMQUIST: Your Honor, excuse me, but  
23 if I might --

24 THE COURT: Yeah.

25 MR. ELMQUIST: -- make a comment. It is

1 conceivable based upon the stipulated facts that the  
2 (inaudible) might be altered slightly, to the extent we  
3 stipulate --

4 THE COURT: Okay.

5 MR. ELMQUIST: -- wouldn't necessarily  
6 have (inaudible) --

7 THE COURT: All right well, that's  
8 certainly fine. I just didn't want the pretrial order  
9 growing as far as new contested facts and issues of law.

10 MR. ELMQUIST: Right. Understood.

11 MS. HANKS: No, Your Honor, I mean although  
12 I will say that all the parties have quite broadly  
13 drafted the scope of what the issues are, and I think  
14 the particularities are really better reflected in the  
15 parties' proposed findings and conclusions.

16 I do -- we do -- we did also talk about the  
17 possibility of our proposed findings and conclusions  
18 also slightly changing based on stipulations that we --

19 THE COURT: Okay.

20 MS. HANKS: -- that we reached.

21 THE COURT: Okay.

22 MS. HANKS: But that would only be to the  
23 extent of narrowing --

24 THE COURT: Okay.

25 MS. HANKS: -- the issues for the purpose

1 of stipulation, not (inaudible).

2 THE COURT: All right. Understood. So I  
3 guess I slightly misspoke. To the extent you narrow  
4 issues and facts, you know, go for it, but I don't want  
5 any new stuff popping up. All right.

6 So let me see -- do we have any other  
7 business? The order setting the trial will simply  
8 specify March 17th through March 21st and it will remind  
9 people to bring sufficient copies of exhibits. And by  
10 sufficient copies, one set for the Court, one set for my  
11 law clerk who will sit in. So sometimes people get that  
12 wrong. I mean I am a little concerned if you have a  
13 huge number, I hate to put you to extra copying, but I  
14 typically like one set for me, one set for the law  
15 clerk, one set for the witness and then each counsel to  
16 have a set. Is that any problem?

17 MR. ELMQUIST: It's not for the intervenor,  
18 Your Honor, but would it be helpful to have electronic  
19 and hard copy?

20 THE COURT: I would love both. I'm not  
21 going to order it, but I would love both if you can  
22 easily do that.

23 MS. HANKS: It's not a problem, Your Honor.

24 THE COURT: It's always very helpful if you  
25 can avoid, you know, giant notebooks by having --

1 MS. HANKS: Would you prefer -- would you  
2 like for us to bring a CD with everything loaded up on  
3 it or would you like for us to load them up?

4 THE COURT: A CD would be good.

5 MS. HANKS: We're happy to do that, Your  
6 Honor.

7 THE COURT: And so that -- yeah, that's  
8 always good when we have a whole bunch of documents.

9 All right. Well, any other housekeeping  
10 matters at this juncture?

11 MR. VITAL: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. VITAL: Just for housekeeping purposes,  
14 Victor Vital for the record. Does the Court desire  
15 opening or closing or should we just be prepared to move  
16 straight into testimony?

17 THE COURT: I would like opening and  
18 closing, you know. I don't think it has to be too  
19 lengthy.

20 MR. VITAL: Yes, Your Honor.

21 THE COURT: In fact, perhaps we should talk  
22 about timing.

23 MR. VITAL: Yes, Your Honor.

24 THE COURT: So is 20 minutes for each  
25 lawyer --

1 MR. VITAL: That's sufficient.

2 THE COURT: -- enough for opening? I  
3 think --

4 MR. ELMQUIST: It's fine with -- Your  
5 Honor, it's fine with the intervenor.

6 THE COURT: Okay.

7 MS. HANKS: Yes, Your Honor. Thank you.

8 THE COURT: Okay.

9 MR. VITAL: And then your work day, I'm  
10 assuming is through 5:00 p.m. just --

11 THE COURT: Well, yeah, typically I would  
12 want to stop by 5:00.

13 MR. VITAL: Okay.

14 THE COURT: You know, if we're like  
15 10 minutes away from some critical witness finishing,  
16 then I would certainly, you know, spill over a little,  
17 but let's try to end at 5:00 every day.

18 MR. VITAL: Yes, Your Honor.

19 THE COURT: As far as lunch breaks, you  
20 know, I don't know, would you all prefer an hour and a  
21 half each day so you --

22 MR. VITAL: Yes, Your Honor.

23 THE COURT: Yeah? Okay. So we will  
24 probably plan on an hour and a half. And then, you  
25 know, once again I kind of like to just see where we are

1 on a particular witness as opposed to say we're going to  
2 stop at 12:00. We will be a little flexible each day  
3 depending on the witness testimony.

4 MR. VITAL: And I will be guided by Your  
5 Honor's pleasure on this and counsel as well. I am  
6 double booked. If I have to move a hearing over at the  
7 state court house -- (inaudible) in the right direction,  
8 I can, if we could take a later lunch -- break for lunch  
9 a little later on Monday, that would be helpful, because  
10 I have to pop over there just for 30 minutes and then  
11 come right back. So if maybe we took lunch at 1:00,  
12 that would give me time --

13 THE COURT: Okay.

14 MR. VITAL: -- to be back by 2:30.

15 THE COURT: That's fine with me. Fine with  
16 counsel.

17 MR. VITAL: Thank you, Your Honor. I  
18 appreciate it.

19 THE COURT: All right. We will just plan  
20 that for Monday and like I said probably do the same  
21 thing on Thursday because of the 1:30 docket that I'm  
22 going to take.

23 MR. VITAL: Yes, Your Honor. That's all I  
24 have. Thank you.

25 THE COURT: Anything else then?

1 MS. HANKS: The only other thing that I  
2 know with regard to witnesses, there have been a lot of  
3 cross designations. The parties are conferring about  
4 making sure witnesses are here and available and we  
5 don't need to issue trial subpoenas.

6 THE COURT: Okay.

7 MS. HANKS: But I just wanted to raise it  
8 in case there was some sort of formality the Court would  
9 like us to address with you, assuming there's not --  
10 assuming we can't resolve all that by stipulation. Do  
11 we -- if parties are ensuring particular witnesses  
12 availability, do we need to file anything or all just  
13 separately?

14 THE COURT: Well, I mean if you're worried  
15 about someone's cooperation, you know, really showing up  
16 and -- or not, I mean I would, you know, encourage you  
17 to issue subpoenas to make sure we have an order we can  
18 enforce in case they don't show up. But other than  
19 that, I guess what I would say is if you all can reach  
20 agreements, you know, if you all three designated the  
21 same person, instead of calling them three separate  
22 times that, you know, whichever, you know, plaintiffs  
23 are going to call the person, but anyone who wants to do  
24 cross that exceeds the scope of direct, you know, rather  
25 than having to recall them later, I hope you all would

1 work that out.

2 MS. HANKS: We would very much like that,  
3 Your Honor.

4 THE COURT: Okay.

5 MR. ELMQUIST: In fact, I believe we've  
6 discussed and agreed to that already that we would call  
7 the witness one time and get in all our direct and cross  
8 and let the cross exceed the direct so we have that  
9 person as a witness.

10 THE COURT: Okay.

11 MR. ELMQUIST: Is that true --

12 MR. OLSON: That is true for nonparties.  
13 Obviously we'd want to have the right to re-call the  
14 defendants.

15 THE COURT: Okay. So we have an agreement  
16 on that. It will be so ordered on nonparties. But you  
17 reserve the right, for example Mr. Comu, to recall him  
18 later in a defensive posture.

19 All right. Well, again, if you're worried  
20 about anyone showing up, I encourage the use of  
21 subpoenas.

22 But we'll hopefully be able to streamline  
23 the evidence a little bit through that agreement with  
24 regard to the scope of cross and direct.

25 All right. Anything else?



1 MR. ELMQUIST: I don't believe so, Your  
2 Honor.

3 MR. VITAL: Nothing from us, Your Honor.

4 THE COURT: Well, thank you again for the  
5 cooperation I have seen so far as far as the pretrial  
6 order and whatnot. And then I will issue the order  
7 setting the trial and look for the final pretrial order  
8 on the 14th. And we will see you on the 17th.

9 MS. HANKS: Thank you, Your Honor.

10 MR. VITAL: Thank you.

11 MR. ELMQUIST: Thank you.

12 (Adjourned.)

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CERTIFICATE

COUNTY OF LUBBOCK )

STATE OF TEXAS )

I, Linda York, Registered Professional  
Reporter and Certified Shorthand Reporter in and for the  
State of Texas, do hereby certify that the foregoing  
pages contain a full, true and correct transcript, to  
the best of my ability, of audiotape furnished by the  
Clerk of the Bankruptcy Court.

Given under my hand this the 16th day of  
October, 2014.

/s/  
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IN THE UNITED STATES BANKRUPTCY  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KING LOUIE MINING, LLC, KING LOUIE ENTERPRISES, LLC AND  
RONALD KATZ,

Plaintiffs,

V.

CENGIZ J. COMU a/k/a CJ COMU,

Defendant.

DIANE G. REED, TRUSTEE.

Intervenor, Co-Plaintiff, and Third-Party  
Plaintiff,

V.

CENGIZ J. COMU, a/k/a CJ COMU,

Defendant,

and

PHYLLIS E. COMU, BERNARD D. BROWN, THE BARCLAY GROUP,  
INC., AND SUNSET PACIFIC, L.P.,

Third-Party Defendants.

BANKRUPTCY PETITION NUMBER: 10-03269-sgj

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TRIAL

MARCH 17, 2014

9:40 A.M. TO 5:01 P.M.

HONORABLE STACEY JERNIGAN, PRESIDING

TRANSCRIPT FROM AUDIO RECORDING

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1 Transcript produced from audio recording by:  
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2 CSR No. 4899, Expiration Date 12/31/15

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- AND -

9 MR. VICTOR VITAL

- AND -

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| STEVEN EVANS.....                      | 144  |
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1 \* \* \* P R O C E E D I N G S \* \* \*

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3 THE COURT: Go ahead and call King Louie  
4 Mining, LLC, et al versus Comu, et al. This is  
5 Adversary 10-3269.

6 Let's start by getting lawyer appearances,  
7 please.

8 MS. HANKS: Kendyl Hanks, Nick Sarokhanian  
9 and Victor Vital for the plaintiffs.

10 THE COURT: Good morning.

11 MR. VITAL: Good morning, Your Honor.

12 MR. ELMQUIST: Good morning, Your Honor,  
13 David Elmquist on behalf of Diane Reed, intervenor in  
14 this action.

15 THE COURT: Good morning.

16 MR. OLSON: Good morning, Your Honor,  
17 Dennis Olson representing the defendants.

18 THE COURT: Good morning.

19 All right. We are set for trial all this  
20 week. If we need the full five days that have been  
21 estimated, my law clerk informs me that I'm very well  
22 organized, I have got electronic copies and folders here  
23 of all of the plaintiffs' collective exhibits. I  
24 likewise have a notebook here of the debtors' six  
25 exhibits in hard copy.

1                   Are there any housekeeping matters we need  
2 to address before we actually start with opening  
3 statement? Hopefully you saw I did sign the pretrial  
4 order that you all submitted yesterday afternoon, Sunday  
5 afternoon, so it will be what governs the trial unless  
6 someone tells me something otherwise that happened  
7 Sunday night. No? I know it was a --

8                   MS. HANKS: Yes.

9                   THE COURT: Yes, I have hard copies of all  
10 behind me but I'm probably going to be using the  
11 computer for most of it.

12                  MR. ELMQUIST: Your Honor, there is one  
13 matter I need to take up. I am set on Judge Houser's  
14 lift stay docket tomorrow. I'm hoping the movant will  
15 see that they should pass for a final because of the  
16 level of the contested issues involved, but if not, I  
17 may need to ask for a short recess to make argument on  
18 that motion tomorrow afternoon. It's on the 1:15  
19 docket.

20                  THE COURT: 1:15. All right. Well, we  
21 will try to adjust our lunch perhaps around that time  
22 frame.

23                  MR. ELMQUIST: Thank you. If there's an  
24 update in terms of being passed, I will let Your Honor  
25 know.

1 THE COURT: Okay. Thank you.

2 MR. VITAL: Good morning, Your Honor. I  
3 have, just as a reminder, a summary judgment hearing so  
4 if we could take a late lunch today, that hearing is at  
5 1:30.

6 THE COURT: 1:30.

7 MR. VITAL: At 600 Commerce and I could be  
8 right back so I would ask for maybe a late lunch that we  
9 break for lunch at like 1:00 and I would be back.

10 THE COURT: Okay. And then --

11 MR. VITAL: If that's fine, Your Honor.

12 THE COURT: 1:00 to 2:30, you think.

13 MR. VITAL: Yes, Your Honor, that would be  
14 perfect.

15 THE COURT: All right. Well, I assume no  
16 one has an issue. I do remember him raising that. So  
17 that's what we will do, 1:00 to 2:30 lunch today.

18 MR. VITAL: And with respect to -- the only  
19 other housekeeping matter plaintiffs have, we have quite  
20 a bit of boxes here. And we wanted to know the Court's  
21 pleasure regarding storage of boxes and items. If we  
22 were able, I would prefer if it's okay with Your Honor  
23 that we could keep the notebooks in the courtroom  
24 throughout the week.

25 THE COURT: We can do that. The only thing



1 we have set this week besides this one short matter this  
2 morning is lift stay docket on Thursday at 1:30, right?

3 (Inaudible).

4 THE COURT: Okay. All right. Well, I mean  
5 it's certainly okay. I was just checking if there were  
6 going to be any attorneys in and out over the week. But  
7 very few, and so yes, that's fine for you to keep them  
8 in here. We will lock up the courtroom overnight.

9 MR. VITAL: Yes, Your Honor.

10 THE COURT: And on lunch breaks.

11 MR. VITAL: Thank you very kindly. Also it  
12 occurs to me that we would like to invoke the Rule. I  
13 don't know we have witnesses that are in here but if --  
14 so we will need -- I would ask any witnesses that are  
15 here be sworn in and we would like to have the Rule  
16 invoked.

17 THE COURT: Okay. Let's see who they are.  
18 Who is going to be the party representative first of all  
19 for each party?

20 MR. VITAL: For the plaintiff it will be  
21 Ron Katz, who is here in the courtroom on the second  
22 row.

23 THE COURT: All right. And then we have  
24 Ms. Reed here.

25 MR. OLSON: And Mr. Comu.

1                   THE COURT: And Mr. Comu. All right. So  
2 those three parties will be allowed to stay in the  
3 courtroom and we have -- is it the fellow there in the  
4 tan jacket?

5                   MS. HANKS: Yes, Your Honor.

6                   THE COURT: All right. You are who, sir.  
7 (Inaudible).

8                   THE COURT: All right. Well, we're going  
9 to invoke the Rule here. I don't know if you know what  
10 that means.

11                  UNIDENTIFIED SPEAKER: He's an attorney.

12                  THE COURT: You are an attorney, so you  
13 know exactly what that means. All right. So you will  
14 have to leave the courtroom, and I'm going to require  
15 you to stay available for whenever you are going to be  
16 called. Any clue from the plaintiffs how long he is  
17 going to need to wait?

18                  MS. HANKS: We talked about him probably  
19 being called tomorrow and it not taking very long, Your  
20 Honor.

21                  THE COURT: Okay.

22                  MS. HANKS: But we're not sure exactly how  
23 long.

24                  THE COURT: Okay. Well, then, you want to  
25 excuse him then so he doesn't have to wait around in the

1 courtroom today?

2 MS. HANKS: Correct. Yes. We've told him  
3 that he doesn't need to be available today to testify.

4 THE COURT: All right, sir. Well, the way  
5 I normally do it is I just swear you in right before  
6 you're about to take the stand, but I will however  
7 though order you to reappear tomorrow at 9:30. I don't  
8 now if there's a subpoena or you're here voluntarily,  
9 but I am going to require you to be present and testify  
10 tomorrow at 9:30. All right. So any questions or  
11 problems with that?

12 MR. MCNEILL: No, Your Honor.

13 THE COURT: Okay. Well, thank you very  
14 much. And then you're excused for now. We'll see you  
15 tomorrow morning.

16 MR. MCNEILL: Thank you.

17 THE COURT: All right. Thank you. All  
18 right. So there's no one else that needs to be excused  
19 from the courtroom. All right. Any other housekeeping  
20 matters?

21 MR. OLSON: Yes, Your Honor, just a couple.  
22 I've got a couple of cases that I would like to hand up.  
23 They're just on revocation. They're kind of basic.  
24 They're not new to the Court or anything and you don't  
25 need to review them today. But when we get to final

1 arguments, I will be arguing from them.

2 THE COURT: All right. Do you have copies  
3 for the others in the courtroom?

4 MR. OLSON: I do. And I have handed them  
5 out.

6 THE COURT: All right. Very good. Thank  
7 you. So I have been handed Mid Tech Consulting,  
8 Sheppard. All right.

9 MR. OLSON: I do have a number of  
10 objections to exhibits on the basis of relevance. I can  
11 do that in my opening statement. None of us expect you  
12 to rule on them but to carry them. It's a strange case.  
13 I think there are a lot of exhibits that are not  
14 relevant on the issue of revocation of discharge but are  
15 relevant in connection with the trustee's complaint. So  
16 they're going to come in, but just, at the end, I think  
17 the Court will probably need to say "I've excluded these  
18 from consideration on the revocation of discharge  
19 issue".

20 THE COURT: All right. Well --

21 MR. OLSON: Otherwise, we would have to  
22 have a bifurcated trial or something, and I don't think  
23 anybody wants to get bogged down in this.

24 THE COURT: All right. Well, this is an  
25 unusual argument. Let me ask you this. Can you just

1 identify the exhibits that you're going to make  
2 relevancy objections to right now on the record?

3 MR. OLSON: Yes, ma'am. Up through  
4 Exhibit 336. Now last night they added more exhibits,  
5 and I'm not complaining about that, but I don't have the  
6 list describing what those are, and so after the noon  
7 break if I could give you any additional exhibits that I  
8 think might not be relevant to the plaintiffs' case.

9 THE COURT: All right.

10 MR. OLSON: I can give you what I've got.

11 THE COURT: Yes, just by number.

12 MR. OLSON: Yes, ma'am.

13 THE COURT: I don't want to hear argument.  
14 But by number which ones are you making this argument  
15 about or objection to?

16 MR. OLSON: Right. Starting, Your Honor,  
17 Exhibit 12, 13, 30, 31, 38, 39, 40, 41, 43, 44, 45  
18 through 60, 61 through 74, 75 through 81, and then  
19 objection 91 with the next, 94, 95, 100, 101, 102, 106,  
20 115, 121, 122, 134, 135, 137, 142 through 146, and then  
21 150 through 161.

22 That concludes my relevancy objections to  
23 Exhibits 1 through 336. Before we start up this  
24 afternoon, I can give you my objections, if any, to the  
25 exhibits that were added last night.

1 THE COURT: Okay. Let me understand. 1  
2 through 336, that's what you knew about until last night  
3 that's why you're cutting it off there?

4 MR. OLSON: Yes, ma'am. And I got those  
5 exhibits this morning, and I'm not complaining. We've  
6 been culling exhibits.

7 THE COURT: Okay.

8 MR. OLSON: And as I understand it, these  
9 were inadvertently let out by the plaintiff. In fact, I  
10 don't know if your volumes have Exhibits 337 --

11 MS. HANKS: They do.

12 MR. OLSON: They do?

13 MS. HANKS: Yes.

14 MR. OLSON: Okay. Mr. Elmquist and I don't  
15 have the descriptions. We have the exhibits. We were  
16 handed those this morning. So it won't take me long to  
17 let you know if there's any additional.

18 THE COURT: Yeah, my exhibits go through  
19 368.

20 MR. OLSON: They should.

21 THE COURT: All right. So let me be clear,  
22 I mean obviously, sort of in vacuum, not in context  
23 right now --

24 MR. OLSON: Right.

25 THE COURT: -- with just a list of numbers.

1 But you're saying that you are going to object on the  
2 basis of relevancy as to these exhibits being considered  
3 on the 727(d) revocation of discharge --

4 MR. OLSON: Correct.

5 THE COURT: -- claim. But you're not  
6 objecting to them being considered --

7 MR. OLSON: On the trustee's complaint.

8 THE COURT: -- on any of the trustee's  
9 claims?

10 MR. OLSON: Right. And I can explain that  
11 now or in opening statement.

12 THE COURT: Okay. Why don't you explain it  
13 because --

14 MR. OLSON: Okay. You've got a chronology  
15 here, events prepetition --

16 THE COURT: Right.

17 MR. OLSON: -- events postpetition to the  
18 date of discharge. And then you've got between the date  
19 of discharge and the filing of the second amended  
20 complaint, that's where they have to allege under the  
21 cases I gave you, here's something that we have learned  
22 since the discharge that we didn't know at the time of  
23 the discharge. And our exhibits go way past that into  
24 events that hadn't even occurred at the time the second  
25 amended complaint was filed. So that can't possibly be

1 a basis for determining whether they meet the test for  
2 revocation of discharge. You've also got kind of a  
3 subset of things that had occurred before the filing of  
4 the second amended complaint, but they're not complained  
5 about in the second amended complaint and they weren't  
6 apparently known until discovery post filing of the  
7 complaint. So that might not be relevant either, on  
8 what did you know when you filed the complaint that you  
9 didn't know when the discharge deadline was missed.

10 THE COURT: All right. Well, let me ask  
11 this, can -- just to make the record very clear from the  
12 beginning and to save time, there are no objections to  
13 any of the plaintiffs' non-trustee plaintiffs' exhibits  
14 3 -- I mean 1 through 330 (sic) other than these you  
15 have listed out?

16 MR. OLSON: Correct.

17 THE COURT: All right.

18 MR. OLSON: And no objection to the  
19 trustee's exhibits.

20 THE COURT: All right. So I can go ahead  
21 and admit now by stipulation all of the non-trustee  
22 plaintiffs' exhibits except for the ones you have listed  
23 out. Okay.

24 So, Dawn, we can coordinate later. But  
25 they've got of exhibits, KLM Exhibits 1 through 330



1 (sic) are now admitted except for the ones you have just  
2 specifically objected to. And what I --

3 MR. OLSON: Yes, ma'am.

4 THE COURT: -- anticipate is as they want  
5 to offer them at trial, I will have a better flavor and  
6 context. I will look at them. And I can specifically  
7 rule on your relevancy objection at that time.

8 Ms. Hanks.

9 MS. HANKS: Your Honor, just to let you  
10 know it's through 336.

11 THE COURT: Oh, I'm sorry. So 1 -- KLM  
12 Exhibits 1 through 336 with the exception of these we  
13 have just named on the record are now added by  
14 stipulation. Trustee's exhibits --

15 MR. OLSON: 1 through 91?

16 MR. ELMQUIST: 91.

17 THE COURT: 1 through 91, okay, are now  
18 admitted.

19 And then do we have a stipulation on the  
20 Defendants' Exhibits 1 through 6 or no?

21 MS. HANKS: I believe most of them are  
22 pleadings, Your Honor.

23 MR. OLSON: There are three orders of this  
24 Court in this adversary that in our meeting last week we  
25 thought that things that we were going to ask you to

1 take judicial notice of we would put an exhibit number  
2 on just to help people prepare a record on appeal.

3 THE COURT: All right. So --

4 MR. OLSON: And then there's a pleading and  
5 then there's the trustee's case notes and then there's a  
6 transcript of the meeting of creditors prepared by the  
7 plaintiffs.

8 THE COURT: All right. So Ms. Hanks, it  
9 looks like all of these are things I can take judicial  
10 notice of, so you have no issue with them?

11 MS. HANKS: The one thing is, Your Honor, a  
12 transcript of the creditors meeting just to make it  
13 clear, that's not an official transcript. It was --  
14 it's sort of taken from an audio.

15 THE COURT: Okay.

16 MS. HANKS: And there's definitely some  
17 gaps and issues in it, but otherwise, we don't -- and  
18 we're not raising an objection to it on that basis, but  
19 we want to make sure it's clear that it's not an  
20 official transcript.

21 THE COURT: Okay. Understood. All right.  
22 So Defendants Exhibits 1 through 6 are admitted. Again,  
23 Trustee's Exhibits 1 through 91 and KLM Exhibits 1  
24 through 336 with the exceptions of those that we have  
25 relevancy objections pending.

1 All right. Any other housekeeping matters  
2 then?

3 MR. OLSON: Yes, ma'am.

4 THE COURT: Okay.

5 MR. OLSON: I don't have any problem with  
6 you doing it that way, but I also don't have any problem  
7 with you just giving me a running objection to the  
8 relevance of those things. And if you don't want to get  
9 bogged down, you know, ruling on this exhibit right now  
10 you can come back later and clean up the record and say  
11 "I admitted these and rejected those."

12 THE COURT: All right. Well --

13 MR. OLSON: If that helps.

14 THE COURT: That's fine. But I -- even  
15 though I'm keeping my list handy, I would like you to go  
16 ahead and make the objection at the time it's offered  
17 just so I don't --

18 MR. OLSON: All right.

19 THE COURT: -- miss this is one of the ones  
20 that --

21 MR. OLSON: All right.

22 THE COURT: -- you had raised. All right.

23 MR. OLSON: And then similarly this has  
24 been kind of a moving train on the plaintiffs' part and  
25 I'm going to be complaining that they've put contentions

1 in the pretrial order that are not supported by the  
2 second amended complaint that they're going to trial on.  
3 And I don't want this to be tried by agreement or  
4 consent or trial amendment or anything else. You may  
5 recall, and that's why I stuck those first three  
6 exhibits in there, we tied Mr. Lippe down to -- he was  
7 limited to the second amended complaint. His third  
8 amended complaint was denied. His attempt to pursue  
9 transfers was denied. And so he's left with what's in  
10 the second amended complaint. And your order  
11 specifically said the trustee can seek leave to amend  
12 but not Mr. Lippe.

13 So I think they want to get into all kinds  
14 of things that are not contained in their pleading.

15 THE COURT: Okay. I'm very confused  
16 because you signed the pretrial order and typically a  
17 pretrial order governs, not the last pleadings.

18 MR. OLSON: You've got plaintiffs'  
19 contentions. You've got defendants' contentions.  
20 Defendants third contention is they're complaining --  
21 they're contending things that are not based on their  
22 pleadings and I don't agree to that, don't think they  
23 should be permitted to go forward with that.

24 THE COURT: Okay. Show me in the pretrial  
25 order where you have carved out --

1 MR. OLSON: Defendants' contentions --

2 THE COURT: Yeah.

3 MR. OLSON: Defendants' contentions

4 Paragraph 3.

5 THE COURT: Okay. Defendants' contentions  
6 Paragraph 3. To the extent the Plaintiffs' contentions  
7 or the Trustee's contentions stated herein are not  
8 supported by their respective complaints, defendants do  
9 not agree that this pretrial order permits an amendment  
10 of their respective complaints (inaudible) and supported  
11 by their respective complaints. Okay. You want to  
12 identify what contentions you're referring to?

13 MR. OLSON: If I may have just a moment,  
14 Your Honor. You may not have a copy of the second  
15 amended complaint handy.

16 By way of background, you may recall that  
17 the motion to revoke was filed and a 12(b)(6) motion was  
18 filed in response and before the first hearing on the  
19 12(b)(6) motion to dismiss, Mr. Lippe filed his first  
20 amended complaint. And then after he did that, we had a  
21 second motion to dismiss filed and the Court  
22 conditionally denied it. This is Exhibit 1 in the  
23 defense exhibit volume.

24 On the second page of the order, you say  
25 that for the reasons stated and the cases cited

1 plaintiffs should be given one more chance to amend  
2 their complaint and plead with sufficient specificity  
3 their allegations against defendant. I'm contending  
4 they have never pled fraud in compliance with Federal  
5 Rule 9. The Court finds that the next amended complaint  
6 must particularly identify the sections that they're  
7 relying on and when and how they learned the facts which  
8 are the basis of their complaint. And if they're  
9 relying on fraudulent transfers, they must in each  
10 instance state to the best of their ability when the  
11 transfer was made and explain the standing of plaintiffs  
12 to prosecute that claim.

13 Now, that was February 24th, 2011. Then  
14 the plaintiffs sought leave to pursue transfer actions  
15 and the Court entered an order which is our Exhibit 2  
16 which said you can't proceed on these because you said  
17 you made a demand that the trustee pursue the claims but  
18 that there was no Exhibit A attached to the motion. The  
19 certificate of service doesn't reflect that it was  
20 served on the trustee. And the motion should have been  
21 filed in the main case so the motion for leave is denied  
22 without prejudice to re-filing of the main case, which  
23 they never did.

24 So then when they filed their second  
25 amended complaint, their one last chance, we filed our

1 motion to dismiss and got it set for hearing, and they  
2 filed a third amended complaint, and sought leave to  
3 pursue all of the stuff contained in it.

4 And this Court in our Exhibit 3 ruled on  
5 that. The second page says you're going to go to trial  
6 on the second amended complaint. Now, denial of the  
7 motion to have leave to file the third amended complaint  
8 is without prejudice to the trustee to seek leave to  
9 amend, which the trustee never did.

10 So I think if you look at the contentions,  
11 they're still trying to get back into all kinds of  
12 stuff.

13 THE COURT: Show me which contentions  
14 you're talking about.

15 You need a copy of the pretrial order?

16 MR. OLSON: I've got one here somewhere.

17 THE COURT: We need to pick up the pace  
18 here.

19 MR. OLSON: Page 3.

20 THE COURT: Okay.

21 MR. OLSON: Talking about knowledge,  
22 mandatory and continuing disclosure requirements, which  
23 is a broad category. And at the bottom misrepresented  
24 assets and business interest at commencement of the  
25 case, misled people with his involvement.

1                   And if you look at the second amended  
2 complaint, it's much more narrow than that. And I think  
3 that they're limited to in Page 6 of the complaint  
4 they're pleading about Sunset Pacific.

5                   THE COURT: Okay. I just want to be very,  
6 very clear about your argument, because people generally  
7 are supposed to give notice with complaints.

8                   MR. OLSON: That's right.

9                   THE COURT: And of course, fraud you have  
10 to plead it with specificity, has to put the defendants  
11 on notice of what the claims are about, but then people  
12 develop their case in discovery. Things expand. So I'm  
13 trying to understand where you think things have  
14 expanded impermissibly as far as like adding claims or  
15 adding whole new areas of subject matter.

16                   So I'm looking at Page 3. Show me exactly  
17 the impermissible contention.

18                   MR. OLSON: Well, I have tried to work at  
19 it backwards, Your Honor, and I will try to get in step  
20 with you.

21                   THE COURT: I want -- you say that their --  
22 you don't agree to certain of the plaintiffs and  
23 trustee's contentions to the extent they're not  
24 supported by the complaints.

25                   MR. OLSON: Just plaintiffs.



1 THE COURT: So their contentions appear on  
2 three pages. Show me which ones are problematic.

3 MR. OLSON: I think that to say we want to  
4 revoke him for statements that were incomplete, false,  
5 or inaccurate that we learned about after we filed the  
6 complaint does not count in determining whether  
7 revocation is appropriate. So when they complain in the  
8 second amended complaint, "you didn't tell us about  
9 Sunset Pacific, you made a transfer to the wife in less  
10 than a year, you backdated documents," they can get into  
11 that. But they can't get into all these complaints  
12 about the TKY Trust and the Daptco Trust and so on which  
13 you specifically denied them to pursue in their third  
14 amended complaint.

15 Now, it's highly relevant to the trustee's  
16 case, but it's not something that you can come in on a  
17 revocation and say "we're going to do what we should  
18 have done pre-discharge and we're just going to use 2004  
19 and other stuff and we will find something to complain  
20 about by the time we get to trial." You can't do that  
21 on revocation. They got to show there was a basis for  
22 denial of discharge. They've got to show that they  
23 didn't know it or weren't put on inquiry, didn't have  
24 due diligence. They've got to show what it is they  
25 learned between the discharge deadline they missed and

1 the day they filed this complaint.

2 THE COURT: All right. Well --

3 MR. OLSON: So if they learned it after  
4 that.

5 THE COURT: I understand the argument  
6 you're making. You can raise these objections at the  
7 time that they attempt to put in evidence, but again,  
8 people are entitled to take discovery and expand the  
9 scope of the evidence beyond literal wording of their  
10 complaint. It's one thing to object to them adding  
11 claims and causes of action and wholly new subject  
12 matter.

13 But people -- I mean that's what discovery  
14 is for to kind of flush through the information you have  
15 early on. So I'm just letting you know I'm a little  
16 skeptical of this, but you certainly have the right to  
17 make these objections as they try to introduce evidence.

18 MR. OLSON: Well, and I understand that.  
19 And again, my point is it's normally done the way you're  
20 talking about. We do that all the time. But not in  
21 litigation over revocation of a discharge. What is it  
22 that you didn't know when the discharge was issued that  
23 you learned --

24 THE COURT: Okay. You can cross-examine  
25 their witness on that.

1 MR. OLSON: I understand.

2 THE COURT: Okay.

3 MR. OLSON: And what I would like to do  
4 rather than get bogged down every time, I will give you  
5 the objection and if you want to carry it, like carry  
6 the relevancy objection, I don't have any problem with  
7 that. But that way I've got my record and --

8 THE COURT: All right.

9 MR. OLSON: And you've got the case  
10 flowing.

11 THE COURT: All right. All right.  
12 Understood. Any other housekeeping matters?

13 MR. OLSON: No, Your Honor.

14 THE COURT: All right. Well, tell you  
15 what, I think we have all of our parties that are  
16 lawyers in the room on Avid Oak Ridge Apartments so I'm  
17 going to take a short break on King Louie Mining.

18 Let me ask the lawyers how long do you  
19 think this will take so they know how long of a break  
20 they have? We don't have any objections, correct?

21 UNIDENTIFIED SPEAKER: No objections.

22 THE COURT: Pardon?

23 UNIDENTIFIED SPEAKER: Just a couple  
24 minutes.

25 THE COURT: Okay. So we will take a

1 five-minute break and then we will start with opening  
2 statements in King Louie Mining.

3 (Break taken.)

4 THE COURT: All right. We are going back  
5 on the record now in King Louie Mining, et al versus  
6 Comu, et al.

7 The Court had indicated at the trial docket  
8 call I would allow 20 minutes each for opening  
9 statement. Are plaintiffs King Louie Mining parties  
10 ready for your opening statement?

11 MR. SAROKHANIAN: Yes, we are, Your Honor.

12 THE COURT: All right. I will hear it at  
13 this time.

14 Laura is going to keep track of your time.

15 MR. SAROKHANIAN: Your Honor, opposing  
16 counsel, may it please the Court.

17 This is not the case or the man that the  
18 privilege of discharge was designed for. The law  
19 requires a debtor's good faith, candor, honesty and  
20 complete transparency in exchange for the privilege of  
21 discharge.

22 At every turn C.J. Comu refused to and  
23 avoided fulfilling those paramount obligations. He has  
24 deliberately misled the trustee, his creditors, and this  
25 Court. That is the basic inequity of this discharge and

1 that is why it should be revoked. We're seeking  
2 revocation under 11 USC Section 727(d)(1) and (d)(2).  
3 We have the burden to show by preponderance of the  
4 evidence of Mr. Comu's bankruptcy fraud. The evidence  
5 will show a course of fraudulent conduct such as the  
6 knowing concealment of assets at the commencement of  
7 bankruptcy, numerous false oaths, and the intentional  
8 omissions and failures to report and turn over assets  
9 that are property of the estate to the trustee.

10 Let me tell you what this case is really  
11 about. Although C.J. Comu has probably swindled many  
12 people, this bankruptcy was designed and aimed to thwart  
13 and hurt one set of people, Ronald Katz, King Louie  
14 Mining and King Louie Enterprises. His deception dates  
15 back to 2004 when he pocketed a secret \$500,000 kickback  
16 out of Mr. Katz's money.

17 What happened is C.J. Comu tricked Mr. Katz  
18 into investing in and loaning about \$2 million to  
19 Mr. Comu's then-company called Humitech. Now what  
20 Humitech used to do is they made a product that used  
21 this mineral called sorbite. Now, it helped keep your  
22 food fresh in refrigerators and keep the moisture out,  
23 increasing the efficiency of refrigerators. According  
24 to C.J. Comu back in '04 Humitech was successfully  
25 franchising its product both within the United States

1 and internationally.

2 And Humitech was looking to purchase  
3 valuable sorbite mining rights in California, which is  
4 what -- which is why they wanted money. But what  
5 Mr. C.J. Comu never disclosed is that he would be taking  
6 that \$500,000 kickback out of Mr. Katz's money that he  
7 would be loaning and he also failed to mention that the  
8 sorbite mining rights were completely worthless.

9 So in 2006 Mr. Katz sued C.J. Comu in New  
10 York state court for common law fraud, securities fraud,  
11 and some other causes of action. For three years C.J.  
12 Comu actively resisted that lawsuit in New York. He  
13 appeared. He answered. He gave a deposition. He filed  
14 dilatory motions. And he even showed up on the day of  
15 trial and said he needed a new lawyer and extra time for  
16 trial. So he got 30 days.

17 But where was he on the 30 day anniversary  
18 when the trial was supposed to start? Nowhere to be  
19 found. So the New York court signed a judgment granting  
20 my clients over \$2 million plus interest for Mr. Comu's  
21 fraud.

22 But his efforts to avoid responsibility for  
23 what he did to Mr. Katz did not end there. When we came  
24 down to Texas to domesticate that judgment, Mr. Comu did  
25 everything he could to avoid or delay postjudgment

1 discovery of his assets. He delayed. He was sanctioned  
2 by a judge over at the state court for delaying. But he  
3 had a reason for that. See, the reason was he was  
4 stalling for time to launch the next part of his  
5 fraudulent scheme: Closing of lucrative reverse merger  
6 transaction and filing this bankruptcy case.

7               Now right before he told you he was  
8 bankrupt, Your Honor, he set up a lucrative business  
9 transaction that he didn't tell you about. What he did  
10 is he bought a public shell company for peanuts. He set  
11 up a reverse merger and he took a 40 percent cut of the  
12 new company, which is called Green Auto. And he took  
13 that 40 percent cut in the form of 95 million common  
14 shares as well as valuable antidilution rights to keep  
15 him at 40 percent.

16               As soon as he closed that transaction which  
17 was in November 2009 just one month before he filed his  
18 Chapter 7 case, he was already selling shares. Before,  
19 during and after his bankruptcy, C.J. Comu has made  
20 millions of dollars off of that Green Auto stock. And  
21 that's something he has deliberately concealed from this  
22 Court.

23               On December 31, 2009, the day he filed his  
24 petition, he wrote his wife two \$2,000 checks, they  
25 grabbed their bags, they put on their sunscreens, and

1 they go on a cruise. That's what bankrupt means to  
2 Mr. C.J. Comu.

3 And so I would like to take a snapshot of  
4 what his life was like on the day he filed bankruptcy  
5 when they were going on that cruise. The Green Auto  
6 stock I was just mentioning, he was slicing and dicing  
7 it. He was selling it left and right. The way he did  
8 it is he has many, many alter egos that he twists, he  
9 manipulates, he swaps in, swaps out, whatever, for his  
10 fancies.

11 One of his favorite alter egos is called  
12 The Barclay Group or TBG. TBG is the alter ego that got  
13 the 40 percent cut of Green Auto, which is the reverse  
14 merger I just mentioned, and he funneled the Green Auto  
15 shares through TBG, through that alter ego to other  
16 alter egos that he controls. Was that scheme disclosed  
17 on these schedules or in a statement of financial  
18 affairs, no.

19 Let's talk about the other things that were  
20 going on in his life. He has a company called Sunset  
21 Pacific, which is the personal piggybank for C.J. Comu  
22 and his wife to support their lavish lifestyle. Sunset  
23 Pacific has always been controlled by C.J. Comu. The  
24 evidence will show that Sunset is owned by a company  
25 called Marathon Management and another company called



1 Coral Group, which are just two more of Mr. Comu's alter  
2 egos.

3           The evidence will also show that any time  
4 Mr. and Mrs. Comu needed something, C.J. Comu would just  
5 stroke a check from Sunset Pacific and they would have  
6 it paid. If he needed a new Mercedes, no problem.  
7 Thanks a lot, Sunset. It would come right out of their  
8 account.

9           Now I want to talk a little bit more about  
10 TBG. TBG is the one he sliced and diced the Green Auto  
11 stock through. And just like Sunset Pacific he has a  
12 story about it. And the story on his schedules, and his  
13 story changes of course, is that some person in the  
14 United Kingdom or maybe France, we're not sure, named  
15 Bernard Brown, owns 99 percent of this TBG, this  
16 personal piggybank -- or is it Brown and Lampe because  
17 his story changed in the middle of the bankruptcy that,  
18 now, "oh, I forgot TBG did a 99 percent stock exchange  
19 with Brown and Lampe, a company. So Brown and Lampe  
20 owns 99 percent, not Bernard Brown." Okay.

21           But even if that's true, and it's not, then  
22 C.J. Comu owned 99 percent of Brown and Lampe, which  
23 again, was not disclosed on his schedules. So whichever  
24 is the truth and whichever is the lie, it wasn't  
25 disclosed and he's committed fraud on this Court.

1 I would like to talk about where the Comus  
2 are living because that is disclosed partially on his  
3 schedules. He says that he's living in a house in  
4 Preston Hollow on Flavian Drive and it's his homestead.  
5 It's a \$400,000 house up in Preston Hollow. But what he  
6 doesn't tell you is he does what most bankrupt people  
7 do, go out and buy a second Preston Hollow house with  
8 straight cash. The way he does it is just like Sunset  
9 Pacific, he uses his brother -- his favorite straw man.  
10 His brother lives in Turkey named Sam or Jim Comu. He  
11 uses offshore accounts. He set up this new company  
12 called Continental Partnership. He temporarily puts the  
13 company under his brother's control for this one  
14 transaction and then, voila, he starts collecting rent  
15 on his homestead-exempted house in Preston Hollow.

16 The evidence will also show that he's not  
17 paying any rent despite the sham lease that he has here,  
18 sham five-year lease. He's not paying any rent on this  
19 new Preston Hollow house. So he's actually making money  
20 in bankruptcy off of something he claimed was exempted.

21 Now, another company he controls is  
22 something called a TKY trust. So Mr. Comu knows he's  
23 going to file bankruptcy and he knows he has millions of  
24 dollars in shares coming in through this Green Auto  
25 transaction I described. So another way he launders

1 that money is through this Canadian trust, TKY. Who is  
2 the trustee? Again, brother Comu.

3 After the bankruptcy, he admits that he's a  
4 beneficiary to TKY Trust. Is that on the schedules? Of  
5 course not.

6 The fact is he's a lot more than just a  
7 beneficiary, Your Honor. He is TKY Trust. TKY Trust is  
8 nothing more than another C.J. Comu money funnel. This  
9 is important because it establishes just one more  
10 confirmation of Mr. Comu's intention to be deceptive  
11 with this Court, to never be honest.

12 There's much more. C.J. Comu had other  
13 undisclosed positions, management positions of  
14 companies, undisclosed assets and other benefits, but  
15 those weren't disclosed. There's much more. This is  
16 just a taste of the fraud that we're dealing with that  
17 will be coming into evidence.

18 Despite this evidence, we expect that  
19 Mr. Comu will say that we should have known about the  
20 bankruptcy fraud, that Mr. Katz's previous lawyer missed  
21 the deadline to object and that Mr. Katz even sued his  
22 previous lawyer for malpractice. We expect that's going  
23 to be his defense.

24 But the truth is Mr. Katz had no idea about  
25 Mr. Comu's bankruptcy fraud until after the discharge.

1 He didn't know about TBG, Green Auto, TKY, an extra  
2 Preston Hollow house. He didn't know he was netting  
3 millions of dollars and owning millions of shares of  
4 this Green Auto transaction. Something completely  
5 unheard of to him.

6           The first he began to hear about Green  
7 Auto, and when he started unravelling all this, was  
8 after discharge when he got information from various  
9 informants that C.J. Comu had also defrauded. So he  
10 received a dossier in September or so of 2011, and  
11 that's when he said, "Okay. There's Green Auto.  
12 There's TBG. There's this connection. There's  
13 something going on." And then in 2013 after our law  
14 firm was hired, we were finally able to dig into the  
15 electronic correspondence and discovery for Mr. Comu's  
16 computers and after spending a lot of time and money is  
17 when we finally were able to see the breadth of his  
18 fraud on the Court.

19           So Mr. Katz did sue his previous lawyer,  
20 but that was because the lawyer missed an easier but not  
21 exclusive path to revocation. And that was because he  
22 had a fraud judgment, an underlying fraud judgment was  
23 his debt.

24           So to the extent they're going to try to  
25 use that against him, knowledge of the underlying

1 Humitech fraud does not equate to the bankruptcy fraud,  
2 which of course he did not learn of until after  
3 discharge.

4                   Your Honor, at the end of the day, this  
5 Court is a court of equity. The law's very clear that a  
6 debtor must have clean hands and be brutally honest  
7 about his financial affairs in order to get a discharge.  
8 Mr. Comu didn't do either of those things. Instead he  
9 orchestrated this entire bankruptcy process to avoid  
10 paying Mr. Katz his money.

11                   Moreover Mr. Katz had suffered over five  
12 years of delay, aggravation and expense due to  
13 Mr. Comu's plans. When the Court gets to meet Mr. Katz,  
14 the Court will see that the equities lie with Mr. Katz.

15                   Based on the deception and duplicity of  
16 Mr. Comu and the pervasive pattern of the fraud that we  
17 will show you, we are confident and hopeful that this  
18 Court will revoke the privilege of discharge that  
19 Mr. Comu was never entitled to receive.

20                   Thank you, Your Honor.

21                   THE COURT: Thank you.

22                   Mr. Elmquist.

23                   MR. OLSON: Your Honor, before he steps up,  
24 I never like to interrupt somebody's opening statement.  
25 They've put on the screen for the Court and left up

1 there and it's still up there, money laundering, house.  
2 Before that there was an exhibit, I don't own a car. I  
3 want both of those marked as exhibits and I object to  
4 them and I want them to be part of the record.

5 THE COURT: All right. You're objecting --  
6 I mean they are demonstrative aids used as part of  
7 opening statement.

8 MR. OLSON: That's fine. Just give them an  
9 exhibit number and I object to their preparation. I  
10 object to the way they're being used and you can carry  
11 that objection.

12 THE COURT: All right. Well, I'm not going  
13 to call them exhibits, because they're demonstrative  
14 aids being used in connection with opening.

15 MR. OLSON: All right.

16 THE COURT: But what --

17 MR. OLSON: DA 1 and DA 2.

18 THE COURT: -- you're arguing is, I don't  
19 know, they're prejudicial, inflammatory, I ought not to  
20 consider them until I have seen evidence of this, maybe,  
21 maybe not.

22 MR. OLSON: I don't think you will find  
23 that this house or the car existed on the day of the  
24 filing of the petition.

25 THE COURT: I think that --

1 MR. OLSON: The debtor got his discharge.  
2 He got his exemption allowed. He went on with his life.  
3 He got this house and got this car.

4 THE COURT: Okay. All right. You know, I  
5 understood that he bought them after the bankruptcy. I  
6 didn't misunderstand the opening.

7 MR. OLSON: They're consistent --

8 THE COURT: Anyway everybody will put on  
9 their evidence.

10 MR. OLSON: All right.

11 THE COURT: We're either going to hear  
12 evidence of this or not.

13 MR. OLSON: Can we mark them demonstrative  
14 aids 1 and demonstrative aids 2 and preserve them for  
15 the record?

16 THE COURT: All right. So --

17 UNIDENTIFIED SPEAKER: And Judge --

18 THE COURT: -- a picture of the Mercedes,  
19 that slide of the demonstrative and then the picture of  
20 the house in Preston Hollow, those two slides have been  
21 objected to as essentially inflammatory and prejudicial.  
22 I overruled the objection, but it's clear for the record  
23 what you have objected to.

24 All right. Mr. Elmquist.

25 MR. ELMQUIST: Thank you, Your Honor. May

1 it please the Court, opposing counsel.

2           Your Honor, the trustee filed on September  
3 5th, 2012 its complaint and intervention after  
4 undertaking extensive examinations of Mr. Comu,  
5 Mrs. Comu and business associates of Mr. Comu to get a  
6 better understanding of exactly what was going on with  
7 respect to Mr. Comu's business activities prior to the  
8 bankruptcy filing and in particular to find out about  
9 the entities that were known to the trustee, Sunset  
10 Pacific and The Barclay Group, but not nearly enough was  
11 known from the standpoint of what was going on with  
12 these companies.

13           And Your Honor, what the trustee, through  
14 counsel, discovered through those examinations is The  
15 Barclay Group is the alter ego of Mr. Comu and we  
16 believe the evidence will show that Mr. Comu has used  
17 that entity for purposes of diverting funds to himself  
18 and to his wife and to other entities that he controls.  
19 The entity, The Barclay Group, according to his  
20 schedules was owned one percent by Mr. Comu and  
21 99 percent by either Brown and Lampe or Mr. Brown.

22           Brown and Lampe, Your Honor, was an entity  
23 that was supposedly formed for the purpose of doing a  
24 merger transaction which all of The Barclay Group stock  
25 was to be acquired by Brown and Lampe, which was an



1 entity supposedly formed in the UK by Mr. Brown and  
2 Mr. Comu would end up with 99 percent of Brown and  
3 Lampe. Well, through discovery we learned that, in  
4 fact, Brown and Lampe never legally existed and the  
5 transaction that supposedly gave rise to the 99 percent  
6 ownership by Mr. Brown or Brown and Lampe was a sham.

7           This was information that was known to  
8 Mr. Comu when he filed the case because the transaction  
9 supposedly occurred in 2007. The reverse merger  
10 transaction that plaintiffs' counsel alluded to was a  
11 transaction that commenced in terms of formation in the  
12 summer and into the fall of 2009 before the filing.

13           The evidence will show, Your Honor, this is  
14 information that is relatively new from -- immediately  
15 from the standpoint of what was discovered through the  
16 email traffic that was obtained. That transaction did,  
17 in fact, close on November 4, 2009. And there was an  
18 entitlement at that time to obtain through that  
19 transaction 40 percent. The Barclay Group was entitled  
20 through that transaction to obtain 40 percent of the  
21 stock that was outstanding or about 95 million shares.

22           Mr. Comu also received for a fee in  
23 connection to that transaction 300,000 shares of the  
24 stock. The certificate was dated, I believe, January 12  
25 or January 13, 2010. But it was a certificate

1 evidencing shares he was entitled to before the petition  
2 was filed. And that certificate was handed over to the  
3 trustee, but the full breadth of that transaction was  
4 not disclosed. Your Honor, we have not because, simply  
5 we did not have, at the time the complaint and  
6 intervention was filed, the breadth of the knowledge or  
7 information that has been gathered by plaintiffs'  
8 counsel.

9 I believe that simply from the standpoint  
10 of what they were capable through their resources and  
11 pursuing, as far as developing this case certainly had  
12 much more access to information and documents that we --  
13 the standpoint of involving forensic experts to review  
14 the email traffic and the like, there's -- I think  
15 there's something like 10,000 emails that were reviewed.  
16 In any event, Your Honor, our focus with respect to the  
17 trustee's complaint is to recover assets that belong to  
18 the bankruptcy estate and that is The Barclay Group  
19 assets in the form of the Green Auto stock that was  
20 issued to The Barclay Group before and after the filing.

21 The stock that was issued after the filing,  
22 Your Honor, was issued pursuant to the antidilution  
23 provisions of the agreement that The Barclay Group  
24 entered into prepetition. So the additional 1.8 million  
25 shares of Barclay -- excuse me -- of Green Auto stock

1 that The Barclay Group received was stock that was  
2 entitled to prepetition.

3           Your Honor, we're also seeking to acquire  
4 the value of the assets that Mr. Comu dissipated through  
5 the sales of this Green Auto stock through The Barclay  
6 Group. The evidence will show The Barclay Group  
7 received at least \$3 million in the sale transactions  
8 that Mr. Comu undertook by and through The Barclay Group  
9 and most of those -- most of that revenue that was  
10 received was paid out in the form of consulting fees to  
11 undisclosed parties because no 1099s or any other  
12 evidence was developed with respect to actually receive  
13 the monies.

14           Your Honor, the other entity that you're  
15 going to hear a lot about is Sunset Pacific. This was a  
16 partnership that was formed back in 1996. In January  
17 of 2006, according to Mr. Comu, he made a gift of  
18 98 percent of that partnership, the limited partnership  
19 interest in that partnership to his wife, Phyllis Comu.  
20 Irrespective of whether or not there was a gift, there's  
21 no doubt that the partnership interest that was in the  
22 name of Mrs. Comu was under the joint management control  
23 of Mr. Comu and his wife since Mr. Comu controlled the  
24 partnership through the general partner which she owned  
25 and controlled.

1                   So it doesn't really matter whether the  
2 stock or -- excuse me -- the limited partnership  
3 interest was transferred to Mrs. Comu because the  
4 ownership and control of that was under joint management  
5 control of Mr. Comu and his wife. And as counsel  
6 indicated, the limited partnership interest or this  
7 limited partnership was used as a means to transfer  
8 revenue from the sales of the Green Auto stock that The  
9 Barclay Group sold.

10                   There are three transactions that counsel  
11 did not mention that you're going to hear about. These  
12 are transactions that occurred in January 2010. In  
13 January of 2010 The Barclay Group, Mr. Comu, entered  
14 into a purchase and sale transaction where he sold two  
15 and a half million shares of the Green Auto stock to  
16 Sunset Pacific and received in exchange, The Barclay  
17 Group received in exchange, a \$200,000 promissory note.

18                   At the same time Mr. Comu arranged for the  
19 sale of 5 million shares to one of these family trusts,  
20 TKY Trust and in exchange received a \$500,000 promissory  
21 note. Finally, Mr. Comu through The Barclay Group sold  
22 2 million shares of the Green Auto stock to the Daptco  
23 Trust, another family trust, and in exchange received  
24 the \$200,000 promissory note.

25                   There have been some payments on those

1 notes through the subsequent sale of the Green Auto  
2 stock that Mr. Comu arranged for through the Daptco  
3 Trust; in other words, the stock was sold. Green Auto  
4 stock was sold to Daptco Trust, TKY Trust, and Sunset  
5 Limited. Thereafter Mr. Comu arranged for sales of that  
6 same stock to third parties and there was some revenues  
7 received by each of those entities that were applied to  
8 the promissory notes but the balances of those notes  
9 remain outstanding.

10           Your Honor, we do believe that Mr. Comu was  
11 aware of his ownership, his 100 percent ownership and  
12 his de facto ownership of The Barclay Group. He thus  
13 knew or should have known that the assets of that entity  
14 were property of his estate. He had a duty to fully  
15 disclose that, and certainly had a duty not to liquidate  
16 the assets of that estate without -- excuse me -- of  
17 that entity without the knowledge or consent of the  
18 trustee.

19           For that reason, Your Honor, we think the  
20 Court should find that the -- not only is The Barclay  
21 Group the alter ego of Mr. Comu, but in fact, Mr. Comu  
22 is responsible and indebted to this estate for the  
23 monies he received from the (inaudible) sale of the  
24 Green Auto stock through The Barclay Group.

25           The Barclay Group received at least

1 \$3 million through the sales that it undertook between  
2 June of 2011 and January of 2012. These are  
3 transactions that the trustee had no knowledge of until  
4 the second examination of Mr. Comu in August of 2012.  
5 And through the examination of the stock transfer agent  
6 Omadwet (phonetic) who handled the transfers of these  
7 shares for The Barclay Group and for Daptco Trust and  
8 the TKY Trust.

9                   Your Honor, the trustee has pled, and I  
10 don't think counsel mentioned anything about the  
11 allegations of the trustee's complaint that go out --  
12 that are beyond -- or the contentions of our -- the  
13 contentions that we have set forth in the pretrial order  
14 are addressed in our complaint. We have asked that the  
15 Court find there's grounds for reverse corporate veil  
16 piercing in this case because, as this Court found in  
17 the Kale Company versus Brunswick Home case, a court  
18 can, the Texas law -- under Texas law, the court can  
19 reverse veil pierce and determine that a corporation is  
20 the alter ego of an individual, if the individual has an  
21 actual ownership or de facto ownership in the  
22 corporation, the corporation was organized or operated  
23 as a mere tool or business conduit for the individual  
24 considering the total dealings of the corporation and  
25 the individual, including the degree to which corporate

1 formalities have been followed and corporate and  
2 individual property have been kept separately, the  
3 amount of financial interest ownership and control the  
4 individual maintains over the corporation, and whether  
5 the corporation has been used for the personal or legal  
6 or improper purposes. And that applying the reverse  
7 veil piercing will not prejudice non-culpable  
8 shareholders.

9           The evidence will show, Your Honor, that  
10 this -- that these factors are clearly met with respect  
11 to Mr. Comu's activities and that this Court should  
12 therefore reverse veil pierce The Barclay Group entity  
13 and find that The Barclay Group and Mr. Comu are  
14 responsible for the debts of this debtor's estate.

15           We're asking the Court also reverse veil  
16 pierce Sunset Pacific for the same reasons. This entity  
17 was likewise used as a mere conduit for Mr. and Mrs.  
18 Comu's personal gain and profit. And it was used to  
19 divert funds from creditors.

20           So, Your Honor, in connection with our  
21 action, we're asking that the Court ultimately grant a  
22 judgment directing the turnover of the assets of The  
23 Barclay Group and Sunset Pacific and find that the  
24 debtor is liable for the monies that were received by  
25 The Barclay Group and wrongfully diverted to entities

1 under Mr. Comu's ownership and control.

2 Thank you.

3 THE COURT: Thank you.

4 Mr. Olson.

5 MR. OLSON: May it please the Court. After  
6 hearing those two openings statements, perhaps you can  
7 see a little bit better what I was saying earlier,  
8 you've got two distinctly different lawsuits here.  
9 You've got a motion to revoke a discharge and then  
10 you've got a trustee's attempt to recover assets.

11 And let me address first the attempt to  
12 revoke the discharge. I think the evidence in this case  
13 is going to show that Mr. Katz's real complaint about  
14 Mr. Comu started with the alleged kickback in '04. I  
15 think the evidence will show that in '07 in depositions  
16 there was testimony by Mr. Comu that Sunset Pacific was  
17 98 percent owned by his wife. I think the evidence is  
18 going to show that the money that Mr. Katz was  
19 complaining about was paid to Sunset Pacific. I think  
20 that Mr. Katz and his lawyers have known that for at  
21 least seven years.

22 Now, the evidence, I think, is also going  
23 to show that the judgment that they obtained for fraud  
24 would be a lay-down 523 pleading if they had filed it.  
25 But they didn't. That bankruptcy was filed with the



1 anticipation that they were going to come in and get  
2 their exception to discharge.

3           Now, at the first meeting of creditors the  
4 evidence is going to show that Mr. Katz's lawyer  
5 attended and made a record that he thought that there  
6 were a lot of assets hidden in Sunset Pacific and that  
7 they were going to do a lot of discovery and there was  
8 discussion with the trustee about 2004s. And there was  
9 also another fellow there with Mr. Katz's lawyer, a  
10 fellow by the name of Buckeye Epstein who complained to  
11 the trustee on the record in front of Lippe, he owns  
12 more than one percent of these entities, he owns these,  
13 he controls these.

14           So at the end of that meeting of creditors,  
15 trustee asked for me to round up certain things and take  
16 them to her. Mr. Lippe asked if he could review the  
17 documents that I took to her. And she said, "sure".

18           The evidence will be that I produced for  
19 her all the documents she requested plus a share  
20 certificate in Green Auto for 300,000 shares made out to  
21 C.J. Comu postpetition. And she said, "is this property  
22 of the estate?" And I said, "I don't think so. But  
23 it's going to be a bone of contention and I want you to  
24 hold this and know that it's there."

25           And she called Mr. Lippe and said, "I've

1 got this stuff for you to come look at." Mr. Lippe came  
2 out, talked to her, wanted to be hired as her special  
3 counsel to pursue the discharge objection.

4 Now, we're talking 727. Trustees don't  
5 pursue 523s. Nobody asked for a 2004. Nobody asked for  
6 an extension of the deadline. The discharge was  
7 entered. And months went by.

8 Now, at that point, Mr. Comu has the one  
9 percent ownership interest in TBG that he had on the day  
10 that he filed the bankruptcy. He didn't do the Green  
11 Auto reverse merger. TBG did. TBG is not the alter ego  
12 of C.J. Comu. It's had a lot of activities for a lot of  
13 years. It's had employees. It's had bank accounts,  
14 it's had landlords. It's had other owners. It's not a  
15 one-man band.

16 Now, it's not at all unusual for somebody  
17 that's running a business, particularly one like this on  
18 a day-to-day basis, to own a very small percentage of  
19 ownership and somebody else own the rest. If you look  
20 at the schedules, you will see that Mr. Comu said that  
21 TBG was 99 percent owned by Mr. Brown, Bernard Brown.

22 I think the evidence is going to show that  
23 that's correct. I think the evidence is going to show  
24 that Brown and Comu contemplated a deal where Comu would  
25 get a toehold in Europe, Brown would get a toehold in

1 the states. He would form an entity Brown and Lampe UK,  
2 which was never formed, but was going to be formed.  
3 That, I think, means the fact that it wasn't formed  
4 means that it's Brown that owns it, not Brown and Lampe.

5 When the suit was filed against Brown and  
6 we answered for all the defendants, Brown said, "I think  
7 it's in Brown and Lampe," so we put in the answer. And  
8 I think Mr. Elmquist will concur that I told him that --  
9 Mr. Elmquist at the time -- "don't worry about it.  
10 You've got it pled. We're not going to come to trial  
11 and say you've sued the wrong person. You're attacking  
12 that ownership interest and I got it."

13 Now, in an attempt to explain why it was  
14 Brown and Lampe as opposed to Brown individually, I  
15 think it was obvious to everybody that Brown and Lampe  
16 UK was never formed, never existed. Brown was just  
17 wrong about that.

18 But you've got a situation where when this  
19 Green Auto deal is closed in November of '09, what does  
20 Comu individually have? He's got one percent of Green  
21 Auto -- one percent of TBG. TBG has -- Chris McNeil can  
22 explain it better -- but TBG has closed on the deal.  
23 They're going to get stock certificates and so on. They  
24 hadn't been issued yet. But it's kind of like McNeil, I  
25 think will use the example, kind of like you bought the

1 car but you hadn't got the title yet.

2 So we disclosed that ownership interest in  
3 TBG. Postpetition we disclosed that we had gotten stock  
4 out of that. We still think that's all Comu got. We do  
5 not agree that TBG is the alter ego of Comu. Now, if  
6 TBG is the alter ego of Comu, then Mr. Elmquist's  
7 contentions are correct, that what TBG got should have  
8 been property of the estate, and you go down that path.

9 Mr. Elmquist and I don't agree on that, but  
10 also have a problem with how do you calculate the  
11 damages. For example, he said between these two dates  
12 there were \$3 million worth of sales. I think we've got  
13 a stipulation that it was certainly in excess of \$2.7  
14 gross proceeds. But that's not net proceeds. When you  
15 sell restricted stock overseas, everybody and their dog  
16 takes a commission on it. And what TBG got was  
17 substantially less and I think there's a stipulation  
18 it's \$686,000.

19 Now, what was TBG doing with that money?  
20 Running its business. Paying rent. Paying employees.  
21 Paying taxes. That's not the money of C.J. Comu.

22 Now, what is required of Katz when the  
23 bankruptcy is filed and he's got all these suspicions?  
24 He's got years of complaints against Comu. He's trying  
25 to pursue his fraud judgment. He's got a lay-down 523.

1 He's attending the 341. He's making all these claims  
2 and accusations and here other people, Epstein, make  
3 accusations. And he goes out and even wants to get the  
4 trustee on board with pursuing a 727. That's imputed to  
5 Mr. Katz, whether he likes it or not. He can't come in  
6 here and say, "I get a do over because of the  
7 malpractice of my lawyer." That's not the law in the  
8 5th Circuit.

9 Now, I think that evidence is going to show  
10 that with regard to Sunset Pacific, the gift of Sunset  
11 Pacific 98 percent ownership January 1st of '06 is way  
12 past being set aside. It's just a separate property of  
13 Mrs. Comu. Now, it's a limited partnership. That's a  
14 different entity. It's very common in limited  
15 partnerships for the GP to own one, two percent, call  
16 all the shots. The limiteds don't run the thing. They  
17 don't have any liability other than their investment.

18 To come in and say "well, we just want to  
19 smear everybody and everything and we want to kick up a  
20 lot of dirt in the water and tromp around and make it  
21 all look like, you know, this is all C.J.'s doings and  
22 it's a fraud on this Court", that's why you have Federal  
23 Rule 9. You got to plead that stuff with specificity.  
24 And you're limited to what they put in their amended  
25 complaint. And they're trying to backdoor now the very

1 things that you told them in three orders that they  
2 could not do.

3 Now, we understand we've got a legitimate  
4 problem with the trustee, that but for this application  
5 to revoke discharge, would have been resolved years ago.  
6 I think the trustee will testify that I told her at the  
7 time we knew these entities were not exempt. We knew  
8 that we could not keep them. We wanted to buy them  
9 back. We wanted to buy them back whenever the trustee  
10 was ready and had a handle on what the value was.

11 The trustee wasn't ready to do that on the  
12 day of the entry of the discharge. Trustees don't  
13 typically administer their estates that quickly,  
14 particularly asset estates. And there was a legitimate  
15 question as to what the Green Auto stock was worth. It  
16 was restricted stock. It's on the pink sheets. Didn't  
17 have any real value on that day. But the upside was  
18 something that had to be gauged.

19 It was stock in an electric auto car. They  
20 were going to attempt to compete with Ford and the other  
21 people that make -- or working on electric cars. Could  
22 have been huge. So to come in and mess that up and say,  
23 "well, you know, we weren't put on inquiry by any of the  
24 stuff that we saw. We didn't know until later." By the  
25 way, they've still never come forth and put in a

1 pleading who the informants were, what they were told,  
2 what that was based on.

3 And again, they do not want to respect the  
4 time line. What happened prepetition is what we're  
5 focused on. Is there something there that's a basis for  
6 denial of a discharge. And did you know about it or  
7 were you put on notice about it before the discharge  
8 deadline to object. And if not, what is it that you  
9 learned after that discharge was entered that you now  
10 know when you filed this second amended complaint.

11 And what happened in '14, '13, '12 doesn't  
12 matter on that issue on that pleading you filed in March  
13 of '11. That's the problem I've got with the  
14 plaintiffs' case.

15 Thank you.

16 THE COURT: Okay. Thank you.

17 All right. Plaintiffs, you may call your  
18 first witness.

19 MR. SAROKHANIAN: Thank you, Your Honor.  
20 The plaintiffs call Ronald Katz.

21 THE COURT: All right, Mr. Katz, if you  
22 could come up to the witness stand, please.

23 (Testimony of RONALD KATZ previously  
24 transcribed.)

25 THE COURT: Plaintiffs next witness.

1 MR. SAROKHANIAN: Your Honor, we're going  
2 to call Bernard Brown by deposition.

3 Your Honor, may we use the Elmo that's in  
4 the podium --

5 THE COURT: You certainly may.

6 MR. SAROKHANIAN: -- for these exhibits?

7 THE COURT: Dawn, I think you --

8 UNIDENTIFIED SPEAKER: -- (inaudible) use  
9 your laptop at the same time you use Elmo.

10 MR. SAROKHANIAN: There's a switch though,  
11 correct?

12 UNIDENTIFIED SPEAKER: I have control of  
13 it. You have to tell me every time.

14 MR. SAROKHANIAN: Okay. We can tell you.  
15 That's no problem. Thank you.

16 UNIDENTIFIED SPEAKER: Do you want me to  
17 put the Elmo up now? So, do you want me to switch it  
18 over to Elmo now or are you going to use your laptop  
19 right now?

20 MR. SAROKHANIAN: We will ask you to switch  
21 it to Elmo now. Thank you.

22 MR. VITAL: May I approach, Your Honor?

23 THE COURT: You may. All right. Thank  
24 you.

25 MR. SAROKHANIAN: And Your Honor, if it



1 pleases the Court, I would like to do the questions and  
2 Mr. Vital will do the answers. And then Ms. Hanks will  
3 have on the Elmo the exhibits that refer therein.

4 THE COURT: All right. Very good. That  
5 will work.

6 (Inaudible.)

7 MS. HANKS: We may not need to do this,  
8 because a lot of these are trustee's exhibits, and I  
9 believe the Court has the trustee binder.

10 THE COURT: I do.

11 MR. SAROKHANIAN: Okay. Well, then we can  
12 just refer you to that.

13 THE COURT: All right. I will pull that  
14 up.

15 MR. SAROKHANIAN: Would that be easier?

16 THE COURT: That's probably easier, yes.

17 MR. SAROKHANIAN: Okay. Great.

18 Is the Court ready?

19 THE COURT: I'm ready.

20 MR. SAROKHANIAN: Now this is from the oral  
21 deposition of BERNARD D. BROWN taken on March 18th,  
22 2013.

23 THE COURT: Okay.

24 MR. SAROKHANIAN: Mr. Vital is sitting on  
25 the witness stand. He will be Mr. Brown, the witness,

1 and I will be referring to the various people who are  
2 questioning Mr. Brown.

3 THE COURT: Okay.

4 MR. SAROKHANIAN: I will begin on Page 9 of  
5 his deposition, Line 12 through 25. I believe this is  
6 Mr. Elmquist conducting the examination.

7 THE COURT: Okay.

8 "Q. Mr. Brown, you understand you have  
9 been sued in this lawsuit?

10 "A. Yes.

11 "Q. You do not consider that to be an  
12 important matter, a lawsuit filed against you?

13 "A. I do, yeah.

14 "Q. Okay. But you haven't retained  
15 documents pertaining to the lawsuit.

16 "A. No.

17 "Q. So you have no documents under  
18 Paragraph Number 1, documents that are referred to in  
19 your answers to the complaint?

20 "A. No.

21 "Q. The next category of documents is  
22 documents evidencing your ownership in The Barclay  
23 Group. Do you have any such documents?

24 "A. There's only one document, the share  
25 swap.

1 "Q. The share swap?

2 "A. Yeah."

3 MR. SAROKHANIAN: And Your Honor, if you  
4 could refer to Trustee Exhibit Number 61, Trustee 61.

5 THE COURT: All right.

6 MR. SAROKHANIAN: That's Deposition Exhibit  
7 Number 2 in the transcript. When you're there.

8 THE COURT: I'm there.

9 MR. SAROKHANIAN: Great. This is Page 10,  
10 starting at Line 10 by Mr. Elmquist.

11 "Q. Take a look at Exhibit 2 and tell me  
12 if that's the document you're referring to as the share  
13 swap? This is the one that's marked --

14 "A. Yeah.

15 "Q. Excuse me?

16 "A. Yes.

17 "Q. This is what you're referring to as the  
18 share swap?

19 "A. Yes.

20 "Q. Okay. And so this acquisition and plan  
21 of share exchange is the only document that evidences  
22 Brown and Lampe's or your ownership interest in The  
23 Barclay Group, is that what you're saying?

24 "A. Yeah. I thought there was another one  
25 as well."

1 MR. SAROKHANIAN: Now on Page 11, Line 11.

2 "Q. So, again, the only document that you  
3 know of that evidences your ownership in The Barclay  
4 Group is Exhibit 2, this acquisition agreement, correct?

5 "A. Yes.

6 "Q. The next category is Allbritton  
7 communications between you and Comu. Do you have any  
8 written communications from Mr. Comu that you retained?

9 "A. No.

10 "Q. You have absolutely no written  
11 communications with him?

12 "A. No.

13 "Q. The next category was written  
14 communications between you and The Barclay Group. Have  
15 you retained any written communications between you and  
16 The Barclay Group?

17 "A. No.

18 "Q. Do you have any documents in your  
19 position (sic) relating to The Barclay Group?

20 "A. No.

21 "Q. Are there other documents on your PC  
22 just as we have been going through these that you have,  
23 for instance, you have documents in your possession  
24 relating to The Barclay Group on your PC?

25 "A. No.

1 "Q. So the only documents in these  
2 categories 1 through 6, the only documents you have in  
3 your possession are the ones under number six that refer  
4 to or relate to Green Auto; is that correct?

5 "A. Yeah.

6 MR. SAROKHANIAN: Now moving to Page 17  
7 starting on Line 22.

8 "Q. Okay. The next heading or reference is  
9 EuroCap Investments, PLC, do you see that?

10 "A. Yes.

11 "Q. What type of consultant services do you  
12 provide to your EuroCap Investments?

13 "A. EuroCap seeks to invest in companies  
14 and I keep an eye open for potential acquisitions.

15 "Q. Who do you deal with at EuroCap?

16 "A. I deal with a chap called Nigel and  
17 C.J.

18 "Q. So the persons you have dealt with at  
19 EuroCap are Mr. Comu, C.J. Comu, and someone named  
20 Nigel; is that right? Yes?

21 "A. Yes.

22 "Q. What is your understanding as to  
23 Mr. Comu's involvement or relationship to EuroCap?

24 "A. I know he has dealings with them.

25 "Q. Do know whether he's an officer or

1 director of EuroCap or an owner?

2 "A. I'm not sure if he's an official owner,  
3 director, or anything like that.

4 "Q. How did you have reason to get involved  
5 with EuroCap Investments? Did Mr. Comu contact you  
6 about that?

7 "A. He told me about it, and I liked the  
8 idea.

9 "Q. Tell me what Mr. Comu described as a  
10 business plan or purpose for EuroCap. What was it  
11 engaged to do?

12 "A. EuroCap engaged -- is engaged in  
13 acquiring up and coming companies that have moved beyond  
14 the initial stages of formation, companies with a  
15 certain track record.

16 "Q. Are these companies that are formed in  
17 the UK?

18 "A. Essentially yes.

19 MR. SAROKHANIAN: And moving to Page 23,  
20 Line 4.

21 "Q. Of what country are you a citizen?

22 "A. UK."

23 MR. SAROKHANIAN: The next page, Page 24,  
24 Line 8.

25 "Q. Under what country's laws was that

1 entity formed? Referring to Brown and Lampe.

2 MR. VITAL: I'm sorry. I missed. Where  
3 were you?

4 MR. SAROKHANIAN: Let me start again. Page  
5 24, I will start at Line 3. This is Mr. Lippe asking  
6 the questions at this point.

7 "Q. Okay. I will ask the court reporter  
8 to mark as Exhibit 4 this business card. And we have  
9 put it on a sticky note so that you can retain the  
10 original, and we will just have a copy. What is that  
11 business card?

12 "A. That's the old business card of Brown  
13 and Lampe, MBH, Limited. So it's a limited company.

14 "Q. And under what country's laws was that  
15 entity formed?

16 "A. Austria.

17 "Q. Austria? Were you previously the owner  
18 of that company?

19 "A. Yes.

20 "Q. And what was the -- there was a  
21 discussion before we began the deposition of the  
22 corporate history. Could you explain in your own words  
23 what happened to this Austrian entity?

24 "A. Sold 2004."

25 MR. SAROKHANIAN: Moving to Page 25, Line

1 5.

2 "Q. Okay. So the name of Brown and Lampe  
3 PLC, a UK corporation. Is there any such entity  
4 formally in existence?

5 "A. No.

6 "Q. So are you doing business using the  
7 name of Brown and Lampe, PLC, a UK corporation?

8 "A. No."

9 MR. SAROKHANIAN: Moving now to Page 28,  
10 starting on Line 4.

11 "Q. At one point in time, isn't it correct  
12 that The Barclay Group actually owned the predecessor  
13 entity for Green Automotive?

14 "A. I believe so yeah.

15 "Q. Okay. And then in November of 2009  
16 there was a --

17 "A. That's right.

18 "Q -- a reorganization, was there not?

19 "A. Correct.

20 "Q. Okay. Whose idea was that  
21 reorganization?

22 "A. C.J., I believe.

23 "Q. We've got some documents that relate to  
24 it, but generally was the plan to do a merger so that  
25 there would be publicly traded stock and Barclay would



1 get some of that stock?

2 "A. Of course.

3 "Q. Okay. And was it C.J. who made those  
4 arrangements?

5 "A. Yeah. C.J. and the people he works  
6 with.

7 "Q. Okay. Did -- go ahead.

8 "A. But we talk every week. I follow  
9 things in detail.

10 "Q. Did C.J. explain anything to you as to  
11 which entities would get Green Automotive stock as a  
12 result of this reorganization?

13 "A. Yeah, it was planning to sell different  
14 bits of stock.

15 "Q. Did he mention any names as to who he  
16 was planning to sell it to?

17 "A. No.

18 "Q. Did he disclose to you that some of the  
19 stock was going to be distributed to trusts of family  
20 members of his?

21 "A. I think so. I think he mentioned names  
22 of trusts and things, yeah.

23 "Q. Does TKY ring a bell?

24 "A. Yes.

25 "Q. TKY Trust ring a bell?

1 "A. Yes.

2 "Q. Okay. And was Daptco D-A-P-T-C-O Trust  
3 another name he mentioned?

4 "A. Yes.

5 "Q. What was the purpose for putting the  
6 Green Automotive stock in those trusts?

7 "A. Sell some stock.

8 "Q. Okay. And that was C.J.'s idea to put  
9 it in those trusts?

10 "A. Yes."

11 MR. SAROKHANIAN: Moving to Page 31, Line  
12 15.

13 "Q. As a result of this restructuring did  
14 Barclay Group acquire a substantial number of shares of  
15 Green Automotive.

16 "A. Yes.

17 "Q. What is your understanding or agreement  
18 with C.J. concerning your salary or compensation or  
19 partnership interest or whatever it's called? How are  
20 you going to make money by doing business with him and  
21 The Barclay Group?

22 "A. I purchased The Barclay Group because I  
23 had the intention of doing different types of deals.  
24 For me, the states is pretty much offshore. It's not as  
25 offshore as St. Kitts or Nevis, but then to get to St.

1 Kitts and Nevis is, as you know, quite difficult. It's  
2 a plane journey. It's change at that French colony and  
3 then you've got to take a sea plane. And so for me, a  
4 U.S. entity is absolutely worth having especially at  
5 that time.

6                   So I took The Barclay Group and everything  
7 to do with it. I allowed C.J. to do the green car,  
8 because I thought the green car was a great thing, at  
9 least worth pursuing at any rate, even though they  
10 didn't have the necessary permissions, the safety tests.  
11 But as far as I was concerned, I didn't think that would  
12 be a problem because the Chinese, I thought, couldn't be  
13 so stupid as to put a car in for testing that failed  
14 tests.

15                   It didn't occur to me. So I said to C.J.,  
16 'look, all right, you can do all that, keep me up to  
17 date though.' We talk every -- every week really.  
18 We've met also several times in the last -- we meet  
19 several times a year, either in London. We have met in  
20 Spain a few times and France, Austria. He's over again  
21 in Bournemouth soon. So you know, I see C.J. all the  
22 time. So I now I have forgotten all -- forgotten what  
23 the question was. All right.

24                   "Q. Are you aware that The Barclay Group  
25 and TKY Trust and Daptco Trust have sold stock totalling

1 some \$4 million Green Automotive stock?

2 "A. Yes.

3 "Q. And directly or indirectly have you  
4 received any of that cash that resulted from those  
5 sales?

6 "A. No, I have drawn some money from The  
7 Barclay Group obviously.

8 "Q. Through what means have you been  
9 receiving money from The Barclay Group over, say, the  
10 last three years?

11 "A. I have instructed C.J. to send me some  
12 money in the last 12 months, a bit of pocket money.

13 "Q. How much has that been?

14 "A. How much has it been? It's been 20 --  
15 20,000, not million.

16 "Q. \$20,000? Have you received directly  
17 or indirectly any of the nearly \$4 million that resulted  
18 from --

19 "A. No.

20 "Q -- - the sales of Green Automotive?

21 "A. No. Unfortunately."

22 MR. SAROKHANIAN: Now moving to Page 38,  
23 Line 3.

24 "Q. Well, let me withdraw that question.  
25 Is it a corporation?

1 "A. The Barclay Group is a corporation.

2 "Q. Yes. And what is the full name?

3 "A. The Barclay Group, Inc.

4 "Q. Inc. And what country is it  
5 incorporated in?

6 "A. United States.

7 "Q. Okay. Do you actually have any stock  
8 in that company?

9 "A. 95 percent of it.

10 "Q. Okay."

11 MR. OLSON: You misread.

12 MR. VITAL: Oh, did I?

13 THE COURT: 99.

14 "A. 99 percent of it."

15 MR. VITAL: Thank you.

16 "Q. Okay. Do you have an actual stock  
17 certificate?

18 "A. No, but if I wanted one, I would get  
19 one.

20 "Q. Are you a director or officer of The  
21 Barclay Group?

22 "A. I am the -- I believe I am the  
23 president.

24 "Q. Are there any corporate minutes for The  
25 Barclay Group?

1 "A. Kept by me, no.

2 "Q. If there are any, who keeps them?

3 "A. The lawyers of The Barclay Group.

4 "Q. And do you know who those people are?

5 "A. I do. There's two. But I can't recall  
6 their names.

7 "Q. Are they attorneys in Dallas?

8 "A. I am not sure if they are based in  
9 Dallas. Probably.

10 "Q. But are they in the U.S.?

11 "A. They are in the U.S., yeah, I think  
12 they are in Dallas. Yeah.

13 "Q. To your knowledge, are you a signatory  
14 for any corporate accounts, any checking accounts of The  
15 Barclay Group?

16 "A. Not yet. Not yet.

17 "Q. When you got \$20,000 from C.J. over the  
18 last year, \$30,000, in what form did you receive that?

19 "A. Transfers. Wires.

20 "Q. Wire transfers? More than one? You  
21 need to say --

22 "A. Yes. Yes.

23 "Q. Do you recall what account those came  
24 from?

25 "A. No, I don't.

1 "Q. Into which account did you receive it?  
2 Was it one in your name individually or some business of  
3 yours?

4 "A. Into someone else's account. I try and  
5 avoid too much going through my accounts for tax  
6 reasons.

7 MR. SAROKHANIAN: Turning to Page 42, Line  
8 20.

9 "Q. Well, considering how much I know about  
10 Portuguese animal life, which is zero, you could be  
11 right. When did you first meet C.J.?

12 "A. 1996.

13 "Q. What company was he involved with then?

14 "A. I believe it was Air Tech. I can't  
15 remember what the first deal was.

16 "Q. What was the business of Air Tech as  
17 you understand it?

18 "A. The manufacturing of air conditioning  
19 units, have them sent to our office in random, pretty  
20 good things, pretty good machines.

21 MR. SAROKHANIAN: Turning to Page 49, Line  
22 20.

23 "Q. There's a partnership known as Sunset  
24 Pacific. Have you heard of it?

25 "A. I don't think so.

1 "Q. In what respect have you met Phyllis  
2 Comu, just socially?

3 "A. She accompanied C.J. to Vienna in 1999,  
4 I believe.

5 "Q. Is she involved in any of his  
6 businesses, to your knowledge, other than just being his  
7 wife?

8 "A. I don't know. I know she -- she has  
9 some interest in one of those companies, Sunset --  
10 Sunset Pacific, yeah. Yeah, that's right. The one you  
11 just mentioned --

12 "Q. Right.

13 "A -- is one of the companies where some  
14 stock was sold, correct.

15 "Q. But to your knowledge, does she have  
16 any active involvement in running any of these  
17 businesses --

18 "A. I wouldn't know.

19 "Q -- activities of C.J.'s.?

20 "A. I wouldn't know. I think she spends  
21 her time involved in some charity work and the usual  
22 stuff that women do, like for pleasure."

23 MR. SAROKHANIAN: Now, turning to Page 51,  
24 Line 1. And Judge, if you look at Trustee Exhibit  
25 Number 16 that's what they're about to refer to.



1 THE COURT: Okay. 16?

2 MR. SAROKHANIAN: Yes, ma'am.

3 THE COURT: I got it.

4 MR. SAROKHANIAN: By Mr. Lippe:

5 "Q. Exhibit 7, do you recognize that as  
6 the 2008 tax return for The Barclay Group?

7 "A. Yes.

8 "Q. Did you have any involvement in the  
9 preparation of that?

10 "A. No.

11 "Q. There were -- there was basically no  
12 business activity in 2008; is that correct?

13 "A. That's what it looks like."

14 MR. SAROKHANIAN: Your Honor, the next  
15 exhibit they refer to is Trustee 17.

16 THE COURT: Okay.

17 "Q. 2009. Is Exhibit 8 the 2009 tax  
18 return?

19 "A. Yeah.

20 "Q. Did you have any involvement in  
21 preparing that return?

22 "A. No.

23 "Q. Was C.J. the one who handled getting  
24 these prepared?

25 "A. I wouldn't know who it is that did the,

1 the preparation.

2 "Q. It reflects that there was a CPA firm  
3 down there.

4 "A. Yeah.

5 "Q. Do you know who dealt with Alvin Dahl?

6 "A. No.

7 "Q. It was not you then, was it?

8 Exhibit 9, is that the 2010 tax return for Barclay?

9 "A. Looks like it.

10 "Q. And the income went up considerably,  
11 did it not?

12 "A. Yes.

13 "Q. Do you know what salary or compensation  
14 C.J. got from The Barclay Group in 2010?

15 "A. Not in my head, no.

16 "Q. What is the reason for the increase in  
17 income comparing 2009 to 2010?

18 "A. I don't know.

19 "Q. Were there any other sources of income  
20 for The Barclay Group in 2010 other than sales of Green  
21 Automotive stock?

22 "A. Can't remember.

23 "Q. But you do recall that it had income as  
24 a result of Green Automotive sales, correct?

25 "A. Oh, yeah.

1 "Q. Do you recall as part of reorganization  
2 of the relationship between Green Automotive and The  
3 Barclay Group in 2009 that there was an agreement that  
4 Barclay Group would loan money to Green Automotive?

5 "A. Yes.

6 "Q. And where did that money come from that  
7 was going to be lent to Green Automotive?

8 "A. I don't know.

9 "Q. You did not furnish any capital to  
10 Green Automotive to fund any loans, did you?

11 "A. No.

12 "Q. Okay. So would that have been funds  
13 generated from C.J. or some of the businesses that he  
14 was conducting, the money that was lent to Green  
15 Automotive?

16 "A. Presumably.

17 MR. SAROKHANIAN: Moving to Page 55, Line  
18 21.

19 "Q. Were you aware that The Barclay Group  
20 and these trusts that C.J. has set up were getting  
21 restricted Green Automotive stock?

22 "A. Yeah.

23 "Q. And in laymen's terms, I'm not asking  
24 you a legal opinion, but what do you understand that  
25 means in terms of your ability to sell the stock?

1 "A. The legends have to be lifted on  
2 restricted stock. It can be various. Usually it's a  
3 time, time limited, but you know the laws change  
4 continually. First of all the company has to become  
5 viable before you -- and then you have to do some  
6 filings. And then you can lift the legends. It varies  
7 from company to company.

8 "Q. Yeah. Has it ever been explained to  
9 you that if the purchaser represents that he is a  
10 sophisticated investor and a certain net worth  
11 requirements that they can purchase the stock even if  
12 it's not registered?

13 "A. Yes.

14 "Q. Exhibit 2 to your deposition, do you  
15 know who prepared this document?

16 "A. No.

17 "Q. Was it prepared in the United States  
18 and then sent to you?

19 "A. Yeah, I believe so.

20 "Q. Yeah, did C.J. arrange to have it  
21 prepared?

22 "A. Probably."

23 MR. SAROKHANIAN: Moving to Page 61, Line  
24 5.

25 "Q. I want to go back to the sale of Brown

1 and Lampe in 2004 where B and L was sold, but you  
2 retained the name. Was that a stock transaction, did  
3 you sell the stock of Brown and Lampe?

4 "A. Yeah.

5 "Q. And can you tell me the party who  
6 bought it?

7 "A. Dr. Carl Dienelt.

8 "Q. Can you spell that last name?

9 "A. D-I-E-N-E-L-T.

10 "Q. How did you -- let's go back. What did  
11 Dr. Dienelt pay for the stock?

12 "A. It was a million. A million.

13 "Q. A million what?

14 "A. Euro.

15 "Q. And what assets did Brown and Lampe  
16 have at the time of the sale?

17 "A. The clients, 2000 clients, its license.

18 "Q. What type of license are you referring  
19 to?

20 "A. Trading license and license to be a  
21 brokerage.

22 "Q. So a stock trading license?

23 "A. A stock trading license.

24 "Q. Who issued the license?

25 "A. The Austrian financial services.

1 "Q. So were those all the stock  
2 transactions, in which Brown and Lampe was involved as a  
3 broker, transactions on the Austrian stock exchange?

4 "A. Some.

5 "Q. But not all?

6 "A. We -- most of all our client -- most of  
7 our clients held U.S. accounts.

8 "Q. So was Brown and Lampe authorized to  
9 act as a broker with respect to U.S. stock transactions?

10 "A. Yes.

11 MR. SAROKHANIAN: Moving to Page 63, Line  
12 10.

13 "Q. At the time of the sale to Dr. Dienelt  
14 were the 100 percent owner Brown and Lampe?

15 "A. Yes."

16 MR. SAROKHANIAN: Page 64, Line 6.

17 "Q. What was the consideration you  
18 provided for the acquisition of the interest you have in  
19 The Barclay Group?

20 "A. The consideration? Well, it was a  
21 share swap so --

22 "Q. But in 2007 Brown and Lampe was a  
23 d/b/a, right.

24 "A. Correct.

25 "Q. So what stock was being swapped?

1 "A. Well, I was going to register the Brown  
2 and Lampe, but I haven't done it yet.

3 "Q. So at time of the acquisition  
4 agreement -- let's pull that out again, Exhibit 2. On  
5 the effective date of the acquisition agreement,  
6 December 30, 2007, there was no stock of Brown and  
7 Lampe, correct?

8 "A. Correct.

9 "Q. Take a look at Page 3 of Exhibit 2,  
10 there's a heading at the bottom of the page. It says  
11 representations and warranties and says of inside energy  
12 corp but that should be Brown and Lampe, correct?

13 "A. Right.

14 "Q. Below that it says B and L represents  
15 and warrants TBG and the shareholders that, and there's  
16 various representations, do you see that?

17 "A. Yes."

18 MR. SAROKHANIAN: Moving to Page 66, Line  
19 14.

20 "Q. I would like you to read yourself 3.1  
21 and tell me when you're done reading that.

22 "A. Okay.

23 "Q. Okay. At the time you signed this  
24 agreement, those representations were not accurate, were  
25 they?

1 "A. No, but they were going to be accurate.

2 "Q. They were going to be accurate. But  
3 this is a present tense. It states, quote, in a  
4 corporation duly organized, end quote. That was not  
5 true at the time you signed this agreement, was it?

6 "A. No.

7 "Q. Take a look at 3.2, Page 4 again,  
8 Section 3.2. Read that to yourself and let me know when  
9 you're done.

10 "A. 3.2?

11 "Q. Yes. Quote, unquote, capital.

12 "A. Yeah.

13 "Q. Are those statements accurate as of  
14 December 30, 2007, are those statements contained in 3.2  
15 accurate?

16 "A. They would have been when the  
17 corporation had been formed.

18 "Q. Mr. Brown, listen to my question. On  
19 December 30, 2007, were the representations contained in  
20 3.2 accurate?

21 "A. At the moment in time because there was  
22 a delay, no.

23 "Q. It refers to -- it states here, quote,  
24 at the closing of the transaction contemplated by this  
25 agreement, B and L shall have 50 million shares of



1 common stock, end quote. Who were the contemplated  
2 shareholders of that common stock?

3 "A. Myself.

4 "Q. And what about the Series A and the  
5 Series B preferred shares reference? Who was supposed  
6 to be on those preferred shares?

7 "A. Well, I mean the corporation would have  
8 had those shares. That would have been the share  
9 structure.

10 "Q. It states here that, quote, 1 million  
11 shares of Series A preferred stock issued in out  
12 standing, end quote.

13 "A. Yes.

14 "Q. Were there, in fact, Series A  
15 preferred shares ever issued?

16 "A. No, they were going to be though,  
17 weren't they?

18 "Q. I don't know. Who would they be issued  
19 to?

20 "A. I don't recall at the moment.

21 "Q. Have you retained a copy of the  
22 acquisition agreement marked as Exhibit 2?

23 "A. No."

24 MR. SAROKHANIAN: Moving to Page 69, Line  
25 21.

1 "Q. Take a look at the third page of  
2 Exhibit 7, please.

3 "A. Yeah.

4 "Q. Do you see the reference to Brown and  
5 Lampe, PLC --

6 "A. Yeah.

7 "Q -- 99 percent ownership; that's not  
8 accurate, is it?

9 "A. No. Well, it's not accurate from the  
10 point of view of, you know, as we have discussed the --

11 "Q. The fact that there was no PLC in  
12 existence at the time.

13 "A. I would say that there were mere  
14 formalities.

15 "Q. What was mere formalities?

16 "A. Getting the documentation done.

17 "Q. But at the time this return was  
18 prepared, Brown and Lampe, PLC did not exist, did it,  
19 correct?

20 "A. Correct."

21 MR. SAROKHANIAN: Line 24.

22 "Q. Take a look at Exhibit 8, please.

23 "A. Yeah.

24 "Q. Take a look at the seventh page of that  
25 document. It has at the top, quote, Schedule G,

1 information on certain persons owning the corporations  
2 voting stock, end quote.

3 "A. What page?

4 "Q. It's seven pages in."

5 MR. SAROKHANIAN: Page 72, Line 5 by  
6 Mr. Elmquist.

7 "Q. Do you see the reference there on the  
8 seventh page. It's Schedule G information on certain  
9 persons owning the corporation's voting stock. And  
10 there's a reference to Brown and Lampe, PLC as owning  
11 99 percent interest, yes?

12 "A. Yes.

13 "Q. It's not accurate, correct?

14 "A. It's not accurate insofar as the  
15 paperwork is concerned except I am Brown and Lampe, PLC.

16 "Q. But it doesn't show you as an owner.  
17 It shows Brown and Lampe, PLC, right?

18 "A. Yeah, if you want to split hairs.

19 "Q. The accurate statement of ownership  
20 should be Bernard Brown d/b/a Brown and Lampe.

21 "A. Yes, if you want to split hairs.

22 "Q. Did you inform Mr. Dahl and Mr. Comu  
23 of the inaccuracy contained in the 2010 return?

24 "A. Don't recall."

25 MR. SAROKHANIAN: Page 73, Line 9.

1 Actually I will go to Line 3.

2 "Q. I was asking you, Mr. Brown, about the  
3 2009 return. I misspoke. Inaccuracy contained in the  
4 2009 return, which is Exhibit 8. Do you recall any  
5 discussions with Mr. Dahl or Mr. Comu concerning that  
6 inaccuracy?

7 "A. No.

8 "Q. All right. Now I would like you to  
9 look at Exhibit 9 which is the 2010 return."

10 MS. HANKS: I will just direct you to  
11 Trustee's Exhibit 18.

12 THE COURT: Okay. All right. Got it.

13 "Q. All right. Now I would like you to  
14 look at Exhibit 9 which is the 2010 return. This time  
15 Schedule G is the eighth page of the document. Can I  
16 find it -- directing your attention to the eighth page,  
17 which is Schedule G, information on certain persons  
18 owning the corporation's voting stock. Again, there's a  
19 reference to Brown and Lampe, PLC, do you see that?

20 "A. Yeah."

21 MR. SAROKHANIAN: Turning to Page 82, Line  
22 11.

23 "Q. The Barclay Group did -- has The  
24 Barclay Group since you've been involved with it had any  
25 board meetings?

1 "A. Board meetings?

2 "Q. I mean a meeting of the board of  
3 directors -- well, do you know who the board -- excuse  
4 me -- well, do you know who the director or directors of  
5 The Barclay Group are?

6 "A. I -- I'm not -- I don't know them  
7 personally. Whether they have had board meetings, I  
8 don't know, presumably that they have.

9 "Q. Have there been any shareholder  
10 meetings of The Barclay Group?

11 "A. I am not aware of any, but presumably.

12 "Q. Have you seen any corporate bylaws for  
13 The Barclay Group?

14 "A. I have looked at them, received them, I  
15 believe some of the documents come my way.

16 "Q. And I think you testified earlier that  
17 you believe that you were the president of The Barclay  
18 Group?

19 "A. Yes.

20 "Q. Is there some document that reflects  
21 that appointment as president of The Barclay Group such  
22 as a board resolution or any document that would  
23 indicate that you have been named president?

24 "A. I haven't seen any. I know that I have  
25 seen my title, I believe, on emails, that sort of stuff

1 or business cards. I believe I have got business cards  
2 at the time.

3 "Q. Have you seen any documents that would  
4 have been filed on behalf of The Barclay Group of Texas  
5 Secretary of State.

6 "A. No, not that I recall. It's possible.

7 "Q. When did you become president of The  
8 Barclay Group?

9 "A. The date, I don't recall.

10 "Q. Well, were you the president of The  
11 Barclay Group in 2011?

12 "A. By then, yeah.

13 "Q. How about 2010?

14 "A. Couldn't tell you.

15 "Q. But you're fairly definite about 2011  
16 you were president?

17 "A. I think so."

18 MR. SAROKHANIAN: Now, Your Honor, the next  
19 exhibit is marked as Trustee Exhibit 63.

20 THE COURT: Okay. I'm there.

21 MR. SAROKHANIAN: Line 12.

22 "Q. Take a look at Exhibit 12, Mr. Brown,  
23 and tell me if you have seen this document before.

24 "A. I can't recall.

25 "Q. About a third way down under Section A,

1 this form shows a listing of the -- each officer,  
2 director, member, do you see that?

3 "A. Yes.

4 "Q. The only name listed there is Mr. Comu  
5 as president, do you see that?

6 "A. I see a, quote, P-R-E-S, period, end  
7 quote.

8 "Q. That's short for president, I believe.  
9 So based on your understanding of officers of The  
10 Barclay Group, is this statement by Mr. Comu accurate?

11 "A. It would imply that I wasn't the  
12 president myself.

13 "Q. Okay. Tell me about the circumstances  
14 surrounding your being appointed as president or elected  
15 as president, how did that come about?

16 "A. It came about that in that I thought I  
17 was the president.

18 "Q. Well, I appreciate --

19 "A. But I don't know when that happened.

20 "Q. Okay. How did you come to the belief  
21 that you were president of The Barclay Group?

22 "A. I must have been told that. I must  
23 have appointed C.J. as my temporary president for  
24 purposes of this document."

25 MR. SAROKHANIAN: We're moving -- we're

1 almost through with this. I know we have lunch coming  
2 up.

3 THE COURT: Okay.

4 MR. SAROKHANIAN: Moving to Page 87, Line  
5 6.

6 "Q. As it relates to the business and  
7 management of U.S. corporations, do you know who is  
8 responsible for the business and management of a U.S.  
9 corporation under --

10 "A. The president or chief executive  
11 officer.

12 "Q. What about what is the role of a  
13 director, a board of directors for a U.S. corporation?

14 "A. The board of directors, chairman of the  
15 board I believe that -- that will be set out in some  
16 kind of memorandum specifying who can do what.

17 "Q. Have you seen any such memorandum as  
18 relates to The Barclay Group?

19 "A. I have probably seen documents, but I  
20 haven't like spent -- I would rather read a book or  
21 something else than study documents of this nature.

22 "Q. Okay. Well, this all goes back to the  
23 belief that you were president of The Barclay Group. I  
24 will tell you that as a matter of U.S. corporate law,  
25 the officers of a corporation are typically appointed to



1 the board of directors.

2 "A. Okay.

3 "Q. And so my question is, do you recall  
4 there being any kind of meeting or discussion with any  
5 board members as relates to your appointment as  
6 president of The Barclay Group?

7 "A. I don't recall that specifically, no.

8 "Q. All right. So your belief that you  
9 were president of The Barclay Group is essentially based  
10 on -- upon some conversation you had with Mr. Comu?

11 "A. It is.

12 "Q. You have never seen any writing  
13 indicating you were appointed as president; is that  
14 right?

15 "A. I may have done -- I don't recall it  
16 though."

17 MR. SAROKHANIAN: Page 89, Line 14.

18 "Q. Right. Let me ask you this before I  
19 introduce a bunch more documents you haven't seen or  
20 don't recall. Mr. Lippe asked you about stock purchase  
21 agreements between The Barclay Group and several  
22 companies, Daptco Trust.

23 "A. That's right.

24 "Q. TKY Trust and Sunset Pacific. And  
25 there are stock purchase agreements pertaining to those

1 transactions?

2 "A. Yes.

3 "Q. Do you recall seeing those agreements  
4 at or about the time they were prepared in January 2010?

5 "A. I don't specifically remember seeing  
6 individual agreements, but I remember him talking about  
7 the transactions.

8 "Q. Okay. What do you recall him telling  
9 you about the transactions?

10 "A. The selling of shares.

11 "Q. Did you and Mr. Comu discuss the terms  
12 upon which The Barclay Group would sell these shares to  
13 these entities?

14 "A. The detail, no. I don't recall  
15 discussing the detail.

16 MR. SAROKHANIAN: Page 92, Line 16.

17 "Q. In connection with The Barclay Group  
18 sales of Green Auto stock, you yourself -- you earlier  
19 testified you yourself received none of the proceeds of  
20 those sales; is that right?

21 "A. Correct.

22 "Q. And is it also true that no company in  
23 which you have any affiliation or connection with  
24 received any of the proceeds of those sales?

25 "A. Correct."

1 MR. SAROKHANIAN: Page 94, Line 11. And  
2 this, Your Honor, is Trustee's Exhibit 65 for your  
3 reference.

4 THE COURT: Okay.

5 "Q. Take a look at Exhibit 17, please, and  
6 tell me if you recall seeing this document before.

7 "A. No, I haven't.

8 "Q. Excuse me?

9 "A. I haven't.

10 "Q. Have you ever been sent any type of  
11 financial statements for The Barclay Group?

12 "A. Not that I can specifically recall, no.

13 "Q. Do you recall having any discussions  
14 with anyone who has prepared financial statements or  
15 account statements for The Barclay Group?

16 "A. Don't think so."

17 MR. SAROKHANIAN: Moving along to Page 100,  
18 Line 6.

19 "Q. Mr. Lippe was asking you about the  
20 stock that was issued by Green Auto and indicated in  
21 that testimony that the stock that was issued was  
22 restricted stock. Do you recall that?

23 "A. The stock issued to?

24 "Q. The Barclay Group.

25 "A. Yes.

1 "Q. Are you aware that there's also  
2 unrestricted stock issued to The Barclay Group?

3 "A. Yes.

4 "Q. Okay. What are the plans with respect  
5 to that unrestricted stock?

6 "A. Sell it."

7 MR. SAROKHANIAN: Page 101, Line 5.

8 "Q. Okay. Have you talked about a specific  
9 number of sales that you would contemplate selling at  
10 this time?

11 "A. Not really.

12 "Q. Have you discussed in the sale of that  
13 stock who would receive the proceeds from that sale?

14 "A. We've talked about it, yes.

15 "Q. Tell me what you have discussed.

16 "A. Investing the money for the future.

17 "Q. Investing it in where?

18 "A. Well, part might be invested in Spain  
19 in property perhaps.

20 "Q. Okay. So what you have discussed with  
21 Mr. Comu would be to use the proceeds from those sales  
22 to acquire an interest in property?

23 "A. A villa.

24 "Q. Okay. In Spain?

25 "A. Correct."

1 MR. SAROKHANIAN: Page 103, Line 2.

2 "Q. Well, have you a timetable in mind as  
3 to when you think some of the stock should be sold?

4 "A. Sooner rather than later.

5 "Q. And just so I'm clear on this, to the  
6 point you have -- to this point you have had no  
7 discussions with Mr. Comu about the allocation of the  
8 proceeds of the sale of this common stock between  
9 Mr. Comu and you or some entity or interest you own?

10 "A. I'm sorry. Regarding the sale -- the  
11 sale of the common stock?

12 "Q. Yes. No. Yeah. The sale of the Green  
13 Auto stock, the unrestricted stock.

14 "A. Right.

15 "Q. You have had no conversations with  
16 Mr. Comu regarding how the proceeds of the sale of that  
17 stock would be allocated between Mr. Comu and you?

18 "A. No, we haven't. We have discussed it,  
19 but we haven't come to any cut yet. We haven't cut the  
20 cake.

21 "Q. What have you discussed in terms of an  
22 allocation?

23 "A. We haven't."

24 MR. SAROKHANIAN: Page 104, Line 5.

25 "Q. If the we (sic) are selling the Green

1 Auto stock owned by The Barclay Group --

2 "A. Correct.

3 "Q -- - and as between you and Mr. Comu, if  
4 he owns one percent of The Barclay Group and you own  
5 99 percent of The Barclay Group, would you expect that  
6 the proceeds from the sale of that Green Auto stock  
7 would be one percent to Mr. Comu and 99 percent to you?

8 "A. No, no, because Mr. Comu has been the  
9 person who's been most involved in the deals running  
10 through The Barclay Group. He's been doing the work  
11 there. And I have said I don't mind that. I liked it  
12 except when they failed the tests. And the question now  
13 is where we proceed from here. Now he got some shares,  
14 which is normal. They are deposited in The Barclay  
15 Group. I suppose because he didn't want to hide things,  
16 he's kept it all where it should be, where all the  
17 transactions were done. And at some point now I  
18 understand the stock is coming up to be sold and as I  
19 say this was mostly his deal. So there's no 99 to one  
20 split.

21 "Q. Okay. So you're saying for the work  
22 that Mr. Comu has done individually with respect to the  
23 Green Auto transactions, he would be due some portion of  
24 the sale of the stock over and above his ownership  
25 interest?

1 "A. Would you repeat that?

2 "Q. Sure. Basically what you're saying is  
3 that because Mr. Comu has provided services to The  
4 Barclay Group in connection with Green Auto transactions  
5 that you feel it fair that Mr. Comu receive something  
6 more than his one percent of the sale proceeds because  
7 of his services?

8 "A. Oh, yes.

9 "Q. Is that right?

10 "A. Correct.

11 "Q. But you have not struck a deal with  
12 Mr. Comu as it relates to that split?

13 "A. Not yet.

14 "Q. Do you have a timetable in mind for  
15 selling the stock and reaching agreement on this?

16 "A. No real timetable."

17 That concludes the excerpts from  
18 Mr. Brown's deposition, Your Honor.

19 THE COURT: All right. Does any other  
20 lawyer want to add excerpts to the record for  
21 consideration? No? All right. I'm sorry?

22 MR. OLSON: Just one, Your Honor.

23 THE COURT: You did? Okay.

24 MR. OLSON: I will have to find my place.

25 (Inaudible).

1 THE COURT: Sure.

2 MR. OLSON: (Inaudible) find it faster --  
3 where no proceeds of any of the sales went into any  
4 entity that you had any ownership interest in and the  
5 next one (inaudible) except TBG and he said --

6 MS. HANKS: I actually marked that as well.  
7 (Inaudible).

8 MR. OLSON: (Inaudible).

9 MS. HANKS: I marked it. Just give me a  
10 second.

11 MR. OLSON: Do we know what page that was?

12 MS. HANKS: Here it is. It's on Page 53.

13 MR. SAROKHANIAN: Do you want me to read it  
14 in, Mr. Olson?

15 THE COURT: 53.

16 MS. HANKS: You should read the whole.

17 MR. OLSON: No, that's not the one.

18 MS. HANKS: Is that not it?

19 MR. OLSON: It was just a real quick -- on  
20 Page 92, Your Honor, Line 25.

21 THE COURT: 92. Okay. So I think Line 16  
22 through 24 were read into the record.

23 MR. OLSON: Yes.

24 THE COURT: And you want to supplement  
25 your --



1 Question:

2 "With the exception of The Barclay Group?"

3 Mr. Elmquist:

4 "Q. Right, with the exception of The  
5 Barclay Group."

6 The witness: "Yeah."

7 MR. OLSON: Through Line 4 on Page 93.

8 THE COURT: All right. That is added to  
9 the record. Anything else?

10 All right. Well, very good. It is one  
11 minute until 1:00 so Mr. Vital you can run down the  
12 street now.

13 MR. VITAL: Thank you, Your Honor. Thank  
14 you very kindly.

15 THE COURT: Reconvene at 2:30 today.

16 (Break taken.)

17 THE COURT: Be seated. We will be going  
18 back on the record now in King Louie Mining versus Comu,  
19 Adversary 10-3269.

20 Are plaintiffs ready to call their next  
21 witness?

22 MS. HANKS: Yes, Your Honor, we are. We're  
23 going to --

24 MR. VITAL: We're going to do more  
25 deposition testimony.

1 THE COURT: All right. Well, let's go  
2 ahead -- and who's going to be the witness.

3 MR. VITAL: I will be the witness again. I  
4 really enjoyed that.

5 THE COURT: Okay. Well, you were missing a  
6 British accent and I had a feeling that witness probably  
7 had a British accent, so you need to work on that.

8 MR. VITAL: I got (inaudible) my British  
9 accent, I think.

10 THE COURT: All right. I'm ready for  
11 witness number three.

12 MR. SAROKHANIAN: Thank you, Your Honor.  
13 We will call ALVIN DAHL by deposition.

14 THE COURT: All right. Is it Alvin Dahl?

15 MR. SAROKHANIAN: Yes, Your Honor, Alvin  
16 Dahl.

17 THE COURT: Okay.

18 MR. SAROKHANIAN: This is a short  
19 deposition, so I will just be going through it  
20 chronologically, Your Honor.

21 THE COURT: Okay. I don't -- do I have  
22 that deposition, copy of it?

23 MS. HANKS: Your Honor, if you don't, I  
24 have a copy of it right now.

25 THE COURT: Is it already -- is it actually

1 an exhibit in the record or no?

2 MS. HANKS: Did you make it an exhibit?

3 MR. VITAL: No, that's your copy. That has  
4 the exhibit and the (inaudible).

5 MS. HANKS: This is the transcript.

6 THE COURT: Okay. Thank you. Dawn, this  
7 is Alvin A-L-V-I-N Dahl D-A-H-L. You may proceed.

8 MR. SAROKHANIAN: Thank you, Your Honor.  
9 By Mr. Elmquist on Page 3, Line 4.

10 "Q. Good morning, Mr. Dahl. I'm here as  
11 an attorney for the bankruptcy trustee in pending  
12 bankruptcy case of Mr. Comu. And I'm here to ask you  
13 some questions. There's no lawsuit this relates to.  
14 This is simply an open-ended examination of the debtor,  
15 Mr. Comu's financial affairs, assets and liabilities.  
16 And since you prepare tax returns for Mr. Comu and his  
17 wife and for various business entities, you're here  
18 today to give testimony with respect to that.

19 "A. Okay.

20 "Q. You understand all that?

21 "A. Yes.

22 "Q. Okay. Have you ever been deposed  
23 before?

24 "A. Oh, yes.

25 "Q. Okay. So you understand how it works?

1 "A. Yes.

2 "Q. Okay. Let's start with just a brief  
3 account of education after high school.

4 "A. Tyler Junior College, associate of arts  
5 degree; University of Texas at Austin, bachelor of  
6 business administration; and University of Texas at  
7 Dallas. 36 hours beyond a bachelor's degree, most of it  
8 in accounting.

9 "Q. Okay. And when did you get your degree  
10 at UT?

11 "A. Austin?

12 "Q. Yes.

13 "A. '66.

14 "Q. When did you start working -- are you a  
15 licensed CPA?

16 "A. Yes.

17 "Q. Okay. When did you start working as an  
18 accountant?

19 "A. '92.

20 "Q. Okay. What did you do after you  
21 graduated from UT?

22 "A. I was in the savings and loan business.

23 "Q. An accounting function or finance  
24 function?

25 "A. I was president and chairman of the

1 board of two of them.

2 "Q. Okay.

3 "A. So I did -- they were small new  
4 charters, and I did -- I did accounting functions there  
5 also.

6 "Q. Okay. When did you start working as an  
7 accountant where you would prepare tax returns for  
8 individuals or companies.

9 "A. '92.

10 "Q. And -- okay. So starting in '92, give  
11 me a brief account of your employment history.

12 "A. I did some part-time tax returns in  
13 '92. And '92 to '93 I was a CFO of a manufacturing  
14 company and then in late '93 I went into partnership  
15 with an existing firm, and --

16 "Q. Where was that?

17 "A. At that time it was Ray Dahl and  
18 Associates.

19 "Q. Okay. Was that here in the Dallas  
20 area?

21 "A. It was here in Dallas, yes. And we had  
22 an office in Phoenix. And then I pulled out in '95 to  
23 open my own firm.

24 "Q. That's Alvin Dahl & Associates?

25 "A. Yeah.

1 "Q. And you have been employed in that  
2 capacity since '95?

3 "A. Yes.

4 "Q. Doing what kind of work?

5 "A. Well, we did tax returns. We did -- up  
6 until 2001 we did audits. In 2001 I sold that half of  
7 the practice that included all the audit work.

8 "Q. Since 2001, it's been strictly doing  
9 tax returns?

10 "A. Of that -- oh, sorry, tax returns and  
11 in '93 and '94 I was CFO of a small public company.

12 "Q. Of that --

13 "A. Along with that.

14 "Q. Once you started your business in '95,  
15 you then sold the audit side in 2001. So 2001 forward  
16 it was principally doing tax returns?

17 "A. Yes.

18 "Q. Okay. Do you have anyone that you work  
19 with at Alvin Dahl & Associates, another professional?

20 "A. Not any more. I used to have two  
21 auditors that worked for me.

22 "Q. Was that prior to selling the audit  
23 practice?

24 "A. Yeah.

25 "Q. All right.

1 "A. They were both CPAs and had a lot of  
2 experience in auditing.

3 "Q. Do you recall when you first started  
4 doing tax work for Mr. Comu?

5 "A. It would have probably been '95,  
6 something like that.

7 "Q. Okay. And you have been doing returns  
8 for him continuously since '95?

9 "A. Yes.

10 "Q. Have you also done returns for any of  
11 his businesses in which he's been involved since then?

12 "A. Some of them, yes.

13 "Q. Which ones come to mind?

14 "A. Well, the Sunset Pacific and Marathon  
15 which is a -- which is the --

16 "Q. Management company?

17 "A. Management company operation. Since I  
18 have been sick, I -- sometimes I have trouble finding  
19 words and I just --

20 "Q. As we get older, we all have that  
21 difficulty."

22 MR. SAROKHANIAN: And by Mr. Olson, "may  
23 just be function of aging."

24 "A. Could be. Could be."

25 MR. SAROKHANIAN: By Mr. Elmquist:

1 "Q. Affectionately known as senior moments,  
2 I guess, but anyway happens to me a lot. All right."

3 MR. ELMQUIST: You didn't have to read that  
4 in.

5 "Q. Let's talk about Sunset Pacific real  
6 quick.

7 "A. Okay.

8 "Q. In the preparation -- well, with  
9 respect to Sunset Pacific, did you do any kind of  
10 accounting work for that entity other than preparing tax  
11 returns?

12 "A. No.

13 "Q. And in the preparation of returns for  
14 Sunset Pacific, who did you work with at that company?

15 "A. C.J.

16 "Q. Anyone else? David Parsley?

17 "A. No.

18 "Q. Strictly Mr. Comu?

19 "A. Yeah.

20 "Q. Okay. Describe for me the process, the  
21 typical process in preparing a federal income tax return  
22 for Sunset Pacific as it relates to how you would go  
23 about gathering information for purposes of preparing a  
24 return?

25 "A. Basically in any case the client would



1 bring in information, their income, expense items, which  
2 could be substantial, could be not much and usually an  
3 income statement, balance sheet or something of that  
4 nature.

5 "Q. Okay. And did Mr. Comu provide income  
6 statements and balance sheets for Sunset Pacific, to  
7 your recollection?

8 "A. I don't think back in the period that  
9 we talked about here.

10 "Q. Well, I'm sorry. Let's -- because of  
11 the time period, I'm focusing on necessarily really  
12 starts around 2005, so in that time frame.

13 "A. 2005. In 2005 there was very little  
14 information necessary to prepare the return. I think  
15 there was -- I looked at it yesterday. It's the only  
16 one of these that I have looked at since, since I  
17 printed them, and I think there was like \$11- or \$12,000  
18 income total for that year.

19 "Q. I'm going to start over. Because at  
20 different examination so we can go ahead and use" --

21 By Mr. Olson: "Yeah".

22 Mr. Elmquist: "Dahl 1."

23 Mr. Olson: "That's fine. Just be Dahl 1."

24 MR. SAROKHANIAN: And Your Honor, for your  
25 convenience, we're referring to Trustee Exhibit

1 Number 30.

2 THE COURT: Okay. I'm there.

3 "Q. Mr. Dahl, take a look at what's been  
4 marked as Dahl 1 and tell me if you recognize this to be  
5 a copy of the --

6 "A. Yes.

7 "Q -- 2005 tax return you prepared for  
8 Sunset Pacific?

9 "A. Yes.

10 "Q. This copy is not signed by you or  
11 Mr. Comu, so let's talk about that for a minute. Do you  
12 have copies of the returns that are signed?

13 "A. No, my process typically is I do three  
14 returns, three copies. I give one is prepared signed by  
15 me and I give to the client and they -- that they can  
16 sign at their leisure or whatever. They file the  
17 return. I don't file the return for them.

18 "Q. So you prepare the return and sign it  
19 indicating that you're done with it?

20 "A. Yeah.

21 "Q. And it's up to the client to sign it  
22 and send it in?

23 "A. Yes.

24 "Q. For filing?

25 "A. Yes. And then I give him a signed,

1 himself a signed copy for his use, and I just put a -- I  
2 have a -- keep an electronic, electronic copy now. I  
3 didn't always but I do now. And I have a hard copy in  
4 the file. And it's not signed by either one of us.

5 "Q. Okay.

6 "A. It's just a -- just a copy.

7 "Q. So the one we're looking at here that's  
8 been marked as Dahl 1, I note a date here of 8/6/12 --  
9 2012.

10 "A. That's when I ran it off.

11 "Q. Okay. So this would have been an  
12 electronic copy --

13 "A. Yes.

14 "Q -- that you had in your files?

15 "A. Yes.

16 "Q. But it's the same as the return that  
17 was --

18 "A. Yes.

19 "Q. I need to finish.

20 "A. I'm sorry.

21 "Q. It's the same return you sent to  
22 Mr. Comu for filing with the IRS?

23 "A. Yes.

24 "Q. If you would, turn to Page 4 of the  
25 return. There's a -- and I'm looking at the balance

1 sheet, item eight says, quote, other investments, end  
2 quote, in parentheses, quote, parenthesis, attached  
3 statement, period, parenthesis, end quote. There's an  
4 amount showing \$16,000 -- excuse me -- \$162,010. I  
5 didn't see a statement attached to this return.

6 "A. There may not have been one. I don't  
7 -- I don't remember whether there was one or not.

8 "Q. Okay. So simply -- simply because it  
9 indicates in parentheses, quote, open parenthesis,  
10 attached statement, closed parenthesis, end quote, that  
11 doesn't mean that you necessarily would attach a  
12 statement?

13 "A. Yes, right.

14 "Q. The -- the item referenced is assets as  
15 other investments. Do you have any idea what those are?

16 "A. No, sir.

17 "Q. At the time you prepared a -- at the  
18 time you prepared the 2005 tax return, did you receive  
19 documents from Mr. Comu to substantiate the numbers put  
20 forth in the return?

21 "A. Yeah, that's --

22 "Q. So the numbers that are set forth here  
23 are numbers that Mr. Comu provided?

24 "A. Yes.

25 "Q. These are not numbers that you would

1 have derived?

2 "A. No.

3 "Q. The figures shown in Line 8 show other  
4 investments of \$162,010, and then that's the beginning  
5 of the tax year. End of the tax year is 103 thousand  
6 dollars 180 -- \$103,180 indicating a loss with respect  
7 to that investment of --

8 "A. 58.

9 "Q. I think it's indicated \$58,830.

10 "A. Yes, sir.

11 "Q. Let's turn to form 4797, sales of  
12 business property. It's two pages back from the page we  
13 were just looking at.

14 "A. Yes.

15 "Q. This shows, quote, loan to Humitech,  
16 end quote. And there's a date of December 31, 2005.  
17 What does that date indicate?

18 "A. That would indicate that there was --  
19 when that loan was written off apparently.

20 "Q. Why do you say that?

21 "A. Well, it's showing as a \$25,000 loss  
22 and has no value under the sales price. Date sold are  
23 written off in my area would be 12/31/05. Gross sales  
24 price would be zero. Cost or other basis would be  
25 \$25,000, which would be the amount of the loan.

1 "Q. Okay. So this is telling you that  
2 basically there was a \$25,000 loan that existed in 2005  
3 but was written off that year?

4 "A. Yes.

5 "Q. Resulting in a \$25,000 loss?

6 "A. Right.

7 "Q. All right. Let's turn to the last two  
8 pages of the return, which are K-1s. Do you prepared  
9 the K-1s --

10 "A. Yes.

11 "Q -- to go with the return? What is the  
12 source of information with respect to the indication of  
13 ownership as set forth in the K-1?

14 "A. Those would be -- that would be what  
15 C.J. gave me as the owners at that point in time.

16 "Q. Do you make any independent  
17 investigation of business entity ownership in connection  
18 with preparing returns or do you just rely on the tax  
19 payer to provide that?

20 "A. Yeah.

21 "Q. The answer is you rely on the taxpayer?

22 "A. I rely on the taxpayer, yes.

23 "Q. The -- I take it the beginning capital  
24 account figure would simply be the amount of this  
25 investment we talked about earlier divided by two,

1 that's shown on this \$81,105 on the K-1.

2 "A. Uh-huh.

3 "Q. Is that right?

4 "A. I think that's right, yeah.

5 "Q. Okay. So if you will turn to the last

6 page, the other 50 percent owner here is shown as

7 Belleview -- Bellville Settlement, LP.

8 "A. Yes, sir.

9 "Q. Are you familiar with that entity at  
10 all?

11 "A. No.

12 "Q. Not done any tax work for it?

13 "A. No."

14 MR. SAROKHANIAN: And Your Honor, now we're  
15 going to be referring to Trustee's 31.

16 THE COURT: Okay.

17 "Q. Take a look at Dahl Number 2, please.

18 "A. Okay.

19 "Q. And keep Dahl 1 close at hand. I have  
20 a question I want to finish about that -- in fact, go  
21 ahead and turn to Page 4 of Dahl 1.

22 MR. SAROKHANIAN: Which would be Trustee's  
23 30.

24 "Q. And Page 4 of Dahl 2.

25 MR. SAROKHANIAN: Which is Trustee's 31.